(1)

92-1387

No. _____

Supreme Court, U.S.
FILED
JAN 15 1993
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

NANCY MCNUTT, PETITIONER

v.

GTE FLORIDA, INC., RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

TO THE SECOND DISTRICT COURT

OF APPEAL

PETITION FOR WRIT OF CERTIORARI

Nancy McNutt, Pro Se
3030 Courtland St.
Sarasota, Fl 34237
813 953-3372

4 cy

QUESTION PRESENTED FOR REVIEW

1. The Second District Court of Appeal and the Circuit Court of the Twelfth Judicial Circuit of Florida ignored perjured sworn statements by Respondent GTE Florida Inc. that had the effect of denying Fourteenth Amendment guarantees concerning vested property rights (pension) and due process. The Circuit Court and the Second District Court of Appeal also accepted, contrary to federal law, common law and the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, the affidavit of petitioner's arbitrator, submitted in support of GTE Florida, after the arbitration hearings were closed. The question thus presented, as it concerns the above issues, is: Whether Florida Courts can usurp federal law, common law, and the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes?

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No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

NANCY MCNUTT, Petitioner,

v.

GTE FLORIDA, INC., Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE SECOND DISTRICT COURT

OF APPEAL

Nancy McNutt, the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgement of the Second District Court of Appeal, entered in the above-entitled case on 21 October, 1992.

OPINIONS BELOW

The October 21, 1992 opinion of the Second District Court of Appeal, whose judgement is herein sought to be reviewed is unpublished (case number 92-2009) and is

reprinted in the separate Appendix to this Petition. The prior opinion of the Circuit Court of the Twelfth Judicial Circuit is unpublished (case number 91-4513-CA-01), and is reprinted in the separate Appendix to this Petition.

STATEMENT OF JURISDICTION

The judgement of the Second District Court of Appeal was entered on 21 October 1992. The jurisdiction of this Court is invoked pursuant to 28 USC 1257(a).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States. Said section reads as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive

any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This case also involves the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, Post Hearing Conduct, D. Clarification or Interpretation of Awards, 1. "No clarification or interpretation of an award is permissible without the consent of both parties."

STATEMENT

On March 6, 1992, respondent GTE Florida, Inc., was the prevailing party in an action to vacate an arbitrator's award (case number 92-4513). On March 10, 1992 petitioner, Nancy McNutt, filing pro se, filed two motions for relief from judgement - fraud and surprise. The motions were scheduled for determination by the trial judge on April 27, 1992 at 2:30 P.M.

On April 6, 1992, petitioner filed a full appeal on the last day possible to do so (case number 92-1328). On April 9, 1992 respondent GTE Florida sent a letter to the trial judge claiming petitioner's motions for relief from judgement were "abandoned". Subsequently, on April 13, 1992 the trial judge denied petitioner's motions as moot and on April 14, 1992 sent notice that the scheduled hearing on April 27, 1992 was cancelled. Please see Appendix B.

On April 21, 1992 petitioner filed a petition for writ of mandamus, case number 92-1457. This was done in order to secure a due process hearing concerning denial of full seniority and pension rights negotiated through collective bargaining. On April 24, 1992 petitioner's mandamus request was consolidated by the Second District Court of Appeal with petitioner's full appeal (case number 92-1328). The same district court order also changed petitioner's mandamus petition to a motion to relinquish jurisdiction, stating

that,"jurisdiction is relinquished to the circuit court for 45 days for petitioner to obtain a ruling on her motions for relief from judgement." Please see Appendix B. Judge Andrew Owens on April 29, 1992 issued a second order, again, without a hearing and, again denying petitioner's motions for relief from judgement. Please see Appendix B.

On May 20, 1992 petitioner filed for a writ of mandamus in the Florida Supreme Court to compel that a three judge panel be assigned, as required in mandamus proceedings, and that procedural fairness be applied (case number 79,893). Petitioner's mandamus request was denied July 16, 1992.

On May 29, 1992 petitioner filed an appeal from a non-final order (case number 92-2009), and on June 15, 1992 petitioner voluntarily dismissed her full appeal, believing that the Second District Court of Appeal would once again consolidate cases, which they did. On June 15, 1992 the Second District Court of Appeal re-activated mandamus case number

92-1457. This case is currently active without a ruling.

On October 21, 1992 the Second District Court of Appeal affirmed the lower court on petitioner's appeal from a non-final order. The first line of the order reads, "Not final until time expires to file rehearing motion and if filed determined."

On October 23, 1992 petitioner filed a motion for recall of mandate. This motion included, as exhibits, the affidavit of Arbitrator William Gary Vause in support of respondent GTE Florida, and an exhibit that showed how the Second District Court of Appeal had consolidated, without issuing an order, petitioner's full appeal with her appeal from a non-final order.

On November 9, 1992 the Second District Court of Appeal, on its own motion, changed petitioner's motion for recall of mandate to a motion for rehearing and denied same. Please see Appendix C. On November 16, 1992 petitioner

filed a petition to invoke all writs jurisdiction in the Florida Supreme Court. This was done in order to secure due process in the District Court, and a new appellate review, if possible, by a neutral and unbiased court.

The federal issues of seniority/pension rights and the arbitrator's submission of an affidavit on behalf of respondent, GTE Florida, were both raised February 5, 1992 during the circuit court hearing. Quoting from page 39 of the hearing transcript, "Your Honor, I'd like to make a point here. Mr. Albeck (GTE Florida's attorney) had sent some material to you and excluded an affidavit that William Gary Vause (the arbitrator) submitted on behalf of GTE." Quoting from transcript pages 40 and 41 - "MR. ALBECK: Let me state for the record, Your Honor, when this case was being scheduled for hearing today, your secretary suggested I send you copies of the entire proceedings as they have transpired. And I

sent you copies of the petitions for disqualification, the petition that takes it out of the circuit, and a copy of my memorandum of law, and affidavits of the various parties attached to that memorandum. So I sent the complete package to Your Honor. MS. MCNUTT: Your Honor, I maintain it was incomplete... THE COURT: Well, I have the affidavit of W. Gary Vause that he signed September, 12th day of September, 1991. Now, whether your packet had omitted it or not, I don't know. It was filed with the Court September the 18th." The The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes was also proffered and accepted by the circuit court judge at this hearing. Quoting from pages 98 and 99 of the hearing transcript, "THE COURT: I really don't think it's that relevant (the Code). If you feel, as far as a hearing before a judge, I'm very liberal in allowing you to put anything in that you want, I'm not saying I'll receive it or review it, but if you feel that it's important for

your -- if it ends up that you end up taking an appeal, either side, if you feel it's important and it's something that would have to be reviewed, if you had to take an appeal in order to receive a fair appeal, I don't mind you proffering it and putting it in. I would have to agree with Mr. Albeck that I Don't think it's relevant to the issues that were presented here, but I'll let you choose to do it in any way you like."

On the issue of seniority/pension rights - quoting from hearing transcript page 49, "Ron Johnson, who is GTE Florida's State Manager of Labor Relations affidavit is in error. I was never hired as a temporary employee in 1967. GTE Florida had no temporary employees in 1967 in the Sarasota business office where I worked. I did not resign September 20, 1969, but transferred to GTE offices in Tampa in order to work while attending school..." Paragraph two of Mr. Johnson's affidavit states - "Plaintiff was originally hired on

September 18, 1967, as a temporary Traffic Operator and resigned on September 20, 1969. She was again rehired as a temporary Traffic Operator on December 1, 1969, and again resigned on September 1, 1973. On June 19, 1974, she was hired as a full-time Operator. On November 19, 1978, she was promoted to a Service Representative, and remained in that position until she was terminated on July 10, 1989."

The denial of full seniority/pension benefits by respondent GTE Florida, Inc. was the subject of petitioner's motion for relief from judgement (fraud) filed March 10, 1992 in Sarasota Circuit Court. Quoting paragraphs 4, 13, 14 and 15 from the motion - "That the grievance against GTE Florida prepared by attorney, Bruce Fein (petitioner's attorney for the arbitration) also stated correct dates of employment service, and that Judge Owens admitted this into the record. That GTE Florida intentionally distorted my correct accredited service date in sworn

statements presented to the court, and in sworn testimony during the arbitration hearing. That GTE deliberately deprived plaintiff of over five years in accrued pension benefits. That this act was retaliatory, in part due to, plaintiff's letters to the Florida Public Service Commission, and a meeting May 1, 1989 with a PSC auditor."

On the appellate level seniority/ pension issues were raised in a petition for writ of mandamus filed April 21, 1992 (rehearing denied May 12, 1992 by the circuit court - please see Appendix B). "That by not allowing the petitioner the opportunity to proffer essential documents, the trial court has committed reversible error. These documents show perjured testimony in oral and written sworn statements concerning petitioner's seniority and pension rights."

The following is quoted from Appellant's Initial Brief (June 2, 1992), On Appeal from the Circuit Court of the Twelfth Judicial Circuit

in and for Sarasota County, Florida - On Appeal from a Non-Final Order, Summary of the Argument: "The lower court judge denied appellant a hearing in which conclusive and relevant evidence would have been proffered to prove, that January 14, 1969, not June 19, 1974 is appellant's correct service date. The lower court's action harmed the appellant, and benefited appellee, GTE Florida. That GTE Florida did not act in good faith by changing the accredited service date of a long-term employee, thereby denying her full pension benefits. That the lower court and the arbitrator both accepted, as true, GTE Florida's sworn statements in this regard - even though objected to at the time. That the years of service denied by the Company all predate ERISA protection (1974). That the appellant thought ERISA protection was available to her, and it was not. That there is no order in the lower court reassigning this case from Judge Parker to Judge Owens, and that efforts to recuse the

lower court judge failed, though a similiar conflict resulted in recusal of an appellate judge. The lower court acted locally and disregarded federal law and public policy in a ruling effectively denying accrued pension benefits negotiated through collective bargaining."

The issue of the arbitrator's affidavit in support of GTE Florida was raised on the appellate level in petitioner's motion for recall of mandate (October 23, 1992). This motion was changed to a motion for rehearing by the Second District Court of Appeal on November 9, 1992 and denied. Please see Appendix C. Quoting paragraphs 6, 7 and 9 from the motion: "The arbitration hearings were closed April 22, 1991, Arbitrator Vause submitted an affidavit on behalf of GTE Florida dated September 12, 1991. The affidavit was accepted by Circuit Court Judges Titus (recused) and Owens; Arbitrator Vause's affidavit stated plaintiff was discharged

for "good cause" - the collective bargaining standard is just cause. Arbitrator Vause's Opinion and Award, likewise, state just cause."

The Florida Supreme Court will not review appeals from non-final orders and petitioner's attempt at discretionary review by that Court failed November 24, 1992. Please see Appendix C.

REASONS FOR GRANTING THE WRIT

The Decision of the Second District Court of Appeal in this Case Expressly, Directly and Inherently Conflicts with the Decisions of the Supreme Court of the United States and Common Law.

"Due process of law clauses have the same meaning in both State and Federal Constitutions." Roundhouse Const. Corp. v. Telesco Masons Supplies Co. Inc., 429 U.S. 889 (1976). "State sovereignty is not absolute; state power can only be exercised against a person within confines of due process of law drawn by its procedural and substantive aspects." Aldens, Inc. v.

LaFollette, 434 U.S. 880 (1977).

Due process guarantees protect everyone from arbitrary and capricious court actions. These guarantees apply to any type of court order. Whether an order is final or non-final, "expressed" or not - if the effect or inherent effect is to deprive an individual of property, basic fairness, and an unbiased hearing the "official" name of the thing is superfluous. Florida Supreme Court Revisions (1980 - no common law right to certiorari, and no state supreme court review of appeals from non-final orders) cannot defeat Fourteenth Amendment rights under the United States Constitution, common law, and common sense.

"Pensions are a vested property right under the Fourteenth Amendment." Stuart v. Flynn, 380 F.Supp. 424 (1974). In Rodic v. Thistledown Racing Club, Inc., 449 U.S. 996 (1980), the Court held that: There is no independent right to due process; one is

entitled to due process only if the state deprives him of preexisting property or liberty."

The district court and the circuit court ignored perjured sworn statements by the respondent, GTE Florida, that had the effect of depriving the petitioner of five years of earned pension benefits (motion for relief from judgement - fraud). "Test of whether due process of law has been violated is whether the challenged practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Auxier v. Woodward State Hosp. School, 439 U.S. 930 (1978).

Petitioner's motions for relief from judgement were noticed for hearing by the circuit court judge. The circuit court judge later cancelled the scheduled hearing. In response petitioner filed the second of three mandamus petitions in this case (92-1457) in order to secure a due process

hearing concerning a protected property right. Subsequently, the Second District Court of Appeal changed petitioner's mandamus request to a motion to relinquish jurisdiction and consolidated it with petitioner's full appeal (92-1328).

Both respondent and petitioner had a right to be heard on this issue. "Notice and opportunity to be heard are the minimal requirements of due process." In re Riggs, 450 U.S. 921 (1980). "A ruling based on evidence which a party has not been allowed to confront or rebut is one which denies due process." Carter v. Morehouse Parish School Board, 404 U.S. 880 (1971).

The district court, in violation of due process, arbitrarily changed petitioner's motion for recall of mandate to a motion for rehearing. This was the second time the district court had authorized rehearing on an unauthorized non-final order. The Second District Court of Appeal is in conflict with their own and all other State District Courts

of Appeal on the issue of rehearing non-final orders. Potucek v. Smeja, 419 So2d 1192 (Fla 2d DCA 1982). By doing this the district court was able to disallow the affidavit of Arbitrator William Gary Vause submitted on behalf of GTE Florida. The affidavit was submitted after the arbitration hearings were closed and in violation of federal law, common law, and the Code of Professional Responsibility for Arbitrator's of Labor-Management Disputes. In Bayne v. Morris, 68 U.S. (1 Wall) 97 (1863) the Court said: "Arbitrator's exhaust their power when they make a final determination on the matters submitted to them. They have no power after having made an award to alter it; the authority confirmed on them is then at an end." Also see Henfree v. Bromley, 6 East 309, 102 Eng. Rep. 1305 (K.B. 1805). Petitioner maintains that this action on the part of the district court was partisan and biased, and states this because of the Second District Court of Appeal's many ties to Stetson College of

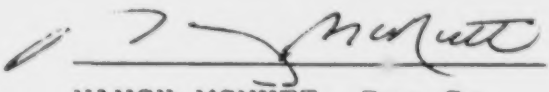
Law and the arbitrator's employment there.

CONCLUSION

WHEREFORE, Petitioner respectfully prays that a writ of certiorari be granted.

DATED: January 8, 1993

Respectfully Submitted,



NANCY MCNUTT, Pro Se

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT

NANCY MCNUTT,

Appellant,

v. CASE NO. 92-02009

GTE FLORIDA INCORPORATED,

Appellee.

Opinion filed October 21, 1992.

Appeal from nonfinal order of the Circuit Court for Sarasota County; Andrew D. Owens, Jr., Judge.

Nancy McNutt, pro se.

James V. Carideo, Thomas R. Parker, Leslie R. Stein,

APPENDIX A

Lorin H. Albeck, Franklin H. Deak, Joseph W. Foster, Kimberly Caswell, Ernesto Mayor, Jr., and Eric Edginton, Tampa, for Appellee.

PER CURIAM.

Affirmed.

CAMPBELL, A.C.J., HALL AND PATTERSON, JJ., CONCUR.

APPENDIX A

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR SARASOTA COUNTY, FLORIDA

NANCY McNUTT,

Plaintiff,

vs. CASE NO. 91-4513-CA-01

GTE FLORIDA, INC.,

Defendant.

_____/

FINAL ORDER CONFIRMING ARBITRATOR'S AWARD

THIS CAUSE having come before the Court on the Complaint and Application to Vacate Arbitrator's Award filed by the Plaintiff, Nancy McNutt, and the Court finding that the Plaintiff has failed to show evident partiality pursuant to Section 682.13(1)(b), Florida Statutes, and that the Plaintiff failed to show exclusion of material evidence pursuant to Section 682.13(1)(d), Florida Statutes, and the Court further

finding that the arbitrator's award entered May 21, 1991, by W. Gary Vause, Arbitrator, should be confirmed it is

ADJUDGED THAT the Complaint and Application to Vacate Arbitrator's Award is hereby denied. It is further

ADJUDGED THAT the arbitrator's award entered May 21, 1991, W. Gary Vause, Arbitrator, is hereby confirmed.

DONE AND ORDERED in Sarasota, Florida, this 3rd day of March, 1992.

_____

ANDREW D. OWENS, JR.

CIRCUIT JUDGE

APPENDIX A

IN THE CIRCUIT COURT OF THE TWELFTH JUCICIAL CIRCUIT OF FLORIDA IN AND FOR SARASOTA COUNTY, FLORIDA

NANCY MCNUTT,

Plaintiff,

vs. CASE NO. 91-4513

GTE FLORIDA, INC., CA-01

Defendant.

_____/

ORDER

This cause having come before the Court and the Court finding the Plaintiff, Nancy McNutt, filed a Notice of Appeal in this action April 6, 1992, it is

ADJUDGED THAT both of Plaintiff's Motions for Relief from Judgement are hereby denied as moot.

DONE AND ORDERED IN Sarasota, Florida, this 13th day of April, 1992.

_____

ANDREW D. OWENS, JR.

CIRCUIT JUDGE

APPENDIX B

cc:

Nancy McNutt, Pro Se

3030 Courtland Street

Sarasota, Fl 34237

Lorin H. Albeck, Esquire

GTE Florida, Inc.

P.O. Box 100, MC 7

Tampa, Fl 33601

APPENDIX B

IN THE SECOND DISTRICT COURT OF APPEAL,

LAKELAND, FLORIDA

NANCY McNUTT,

Appellant(s),

v.

GTE FLORIDA, INC.,

Appellee(s).

_____/

April 24, 1992

CASE NO. 92-01328

92-01457

BY ORDER OF THE COURT:

Upon consideration, it is ordered that the above-numbered cases are hereby consolidated.

It is further ordered that the petition for writ of mandamus filed in Case No. 92-01457 is treated as a motion to relinquish jurisdiction and is granted. Jurisdiction is relinquished to the circuit court for 45 days for petitioner to obtain a ruling on her motions for relief from judgement.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

WILLIAM A. HADDAD, CLERK

APPENDIX B

C: Nancy McNutt

Lorin H. Albeck, Esq.

Honorable Andrew D. Owens, Jr.

Karen E. Rushing, Clerk

/BB

APPENDIX B

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR SARASOTA COUNTY, FLORIDA

NANCY MCNUTT,

Plaintiff,

vs. CASE NO. 91-4513-CA-01

GTE FLORIDA, INC.,

Defendant.

_____/

ORDER

The Second District Court of Appeal having relinquished jurisdiction to the Circuit Court effective April 24, 1992. The Court having reviewed both Motions for Relief from Judgement filed by Plaintiff.

IT IS ADJUDGED that both of Plaintiff's Motions for Relief from Judgement are hereby denied.

DONE AND ORDERED in Sarasota, Florida, this 29th day of April, 1992.

_____

ANDREW D. OWENS, JR.

APPENDIX B

CIRCUIT JUDGE

cc: Ms. Nancy McNutt
3030 Courtland Street
Sarasota, FL 34237

Lorin H. Albeck, Esquire
GTE Florida, Inc.
P.O. Box 100, MC 7
Tampa, Fl 33601

William A. Haddad, Clerk (Case No. 92-01457)
Second District Court of Appeal
P.O. Box 327
Lakeland, FL 33802

APPENDIX B

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR SARASOTA COUNTY, FLORIDA

NANCY MCNUTT,

Plaintiff,

vs. CASE NO. 91-4513-CA-01

GTE FLORIDA, INC.,

Defendant. (2ND DCA CASE # 92-1457)

_____/

ORDER

THIS CAUSE having come before the Court on the Motion for Rehearing and Clarification filed by the Petitioner/Appellant, Nancy McNutt, and the Court having reviewed same,

IT IS ADJUDGED that the Motion for Rehearing and Clarification is hereby denied.

DONE AND ORDERED in Sarasota, Florida, this 12th day of May, 1992.

APPENDIX B

ANDREW D. OWENS, JR.

CIRCUIT JUDGE

cc: Ms. Nancy McNutt

3030 Courtland Street

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Lorin H. Albeck, Esquire

GTE Florida, Inc.

P.O. Box 100, MC 7

Tampa, FL 33601

APPENDIX B

IN THE SECOND DISTRICT COURT OF APPEAL

LAKELAND, FLORIDA

NOVEMBER 9, 1992

NANCY McNUTT,

Appellant(s),

v. Case No. 92-02009

GTE FLORIDA, INC.,

Appellee(s).

_____/

BY ORDER OF THE COURT:

Appellant, pro se, having filed a motion for recall of mandate which the court treated as a motion for rehearing in the above-styled case, upon consideration, it is

ORDERED that the motion is hereby denied.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

WILLIAM A. HADDAD, CLERK

APPENDIX C

c: Ms. Nancy McNutt

Lorin H. Albeck, Esq.

Karen E. Rushing, Clerk

/PM

APPENDIX C

SUPREME COURT OF FLORIDA

TUESDAY, NOVEMBER 24, 1992

NANCY MCNUTT,

Petitioner,

vs.

GTE FLORIDA INCORPORATED,

Respondent.

CASE NO. 80,805

District Court of Appeal 2nd District - No. 92-02009

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

No Motion for Rehearing will be entertained by the Court.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

cc: Hon. William A. Haddad, Clerk

APPENDIX C

Hon. Karen E. Rushing,

Clerk

Hon. Andrew D. Owens,

Jr., Judge

Nancy McNutt, Sarasota

Lorin Albeck, Esquire

By: Betsy Hill

Deputy Clerk

APPENDIX C

Supreme Court, U.S.
FILED
MAR 9 1993
OFFICE OF THE CLERK

No. 92-1387

IN THE

Supreme Court of the United States

OCTOBER TERM 1993

NANCY MCNUTT,
Petitioner,

v.

GTE FLORIDA, INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 15 OF THE RULES OF THE UNITED STATES SUPREME COURT

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ATTORNEYS FOR RESPONDENT

BEST AVAILABLE COPY

QUESTIONS PRESENTED

PETITIONER APPEARS TO STATE THAT SHE HAS BEEN DENIED DUE PROCESS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION BY CLAIMING THAT THE FLORIDA STATE COURTS IGNORED WHAT PETITIONER ALLEGES AS "PERJURED SWORN STATEMENTS." PETITIONER ALSO CONTENDS, OR IN LIEU OF HER FIRST QUESTION APPEARS TO CONTEND, WHETHER THE FLORIDA COURTS CAN USURP FEDERAL LAW, COMMON LAW AND A SO-CALLED CODE OF PROFESSIONAL RESPONSIBILITY FOR ARBITRATORS OF LABOR MANAGEMENT DISPUTES. THE NATURE OF THESE QUESTIONS AND WHETHER THEY SERVE TO OPERATE TO CONFER JURISDICTION UPON THIS COURT WILL BE DISCUSSED HEREINAFTER IN THIS BRIEF.

LIST OF ALL PARTIES TO THE PROCEEDING

The parties to the proceedings below in the trial and appellate courts are the Petitioner, Nancy McNutt, Respondent, GTE Florida Incorporated[1] sued herein as GTE Florida, Inc., and Judge James E. Lehan, Chief Judge of the District Court of Appeal, Second Appellate District, State of Florida.

[1]In response to Rule 29.1, Respondent, GTE Florida Incorporated, named herein as GTE Florida, Inc., is a wholly-owned subsidiary of GTE Corporation whose majority owned subsidiaries are set forth in Item A of the Appendix to this Brief.

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No. 92-1387

IN THE

Supreme Court of the United States

OCTOBER TERM 1993

NANCY MCNUTT,
Petitioner,

v.

GTE FLORIDA, INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 15 OF THE RULES OF THE UNITED STATES SUPREME COURT

STATEMENT OF CASE

Although Petitioner has set forth some of the factual matters concerning the proceedings below in her Petition, a more complete review of the proceedings below may be of assistance to the Court at the risk of some redundancy. On March 6, 1992, the trial court, after hearing, rendered a Final Order Confirming an Arbitrator's Award. Said Final order is set forth as Appendix A to her Petition for Writ of Certiorari.

In this particular case, Petitioner is a former employee of Respondent who was discharged from employment on July 10, 1989, for various reasons including her overall work record and continued insubordinate behavior. Petitioner was an employee represented by the International Brotherhood of Electrical Workers,

Local Union 824, which is the sole certified bargaining agent for bargaining unit employees of Respondent, and the Petitioner in this case was one of those bargaining unit employees. Under the terms of the Collective Bargaining Agreement, discharge of an employee may only occur upon "just cause." An employee who believes he or she has been discharged without just cause must, under the Collective Bargaining Agreement, utilize a grievance procedure consisting of three steps with review by successively higher management and union officials. If that is unsuccessful in resolving the matter, the grievance is tried in a trial-type hearing before an impartial arbitrator under the Labor Arbitration Rules of the American Arbitration Association. In this particular case, Petitioner proceeded through the grievance procedure and demanded arbitration of her grievance.

A formal hearing was held before the arbitrator on March 25, 1991, and in said hearing testimony was given and recorded by a court reporter, and Petitioner was represented by independent counsel of her own choosing. Subsequent to the hearing, the arbitrator rendered his award on May 21, 1991, denying and dismissing Petitioner's grievance and finding just cause for her discharge. For the edification of the Court, copies of the relevant portions of the Collective Bargaining Agreement and the arbitrator's award are set forth as Items B and C, respectively, in Respondent's Appendix to this Brief. On August 19, 1991, Petitioner filed an Application to Vacate the Arbitrator's Award in the Circuit Court of the Twelfth Judicial Circuit of the State of Florida in accordance with Chapter 682 of the Florida Statutes (1991). Petitioner's Application was based upon two subdivisions of Section 682.13 of the Florida Statutes (1991) providing for vacation of an arbitrator's award when:

> Section 682.13(l)(b) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party; and,

> Section 682.13(l)(d) The arbitrators or the umpire in the course of his jurisdiction refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of s.682.06, as to prejudice substantially the rights of a party."

The essence of the Petitioner's claim in the trial and appellate courts below was that the arbitrator was biased due to certain professional relationships and that the arbitrator refused to admit what Petitioner claims was material relevant evidence.

Four days after the Final Order of the Circuit Court of the Twelfth Judicial Circuit which was rendered on March 6, 1992, Appellant filed two motions styled as Motions for Relief from Judgment as permitted by the Florida Rules of Civil Procedure. The first motion was based upon surprise in that Appellant thought that she had only 10 days within which to file a direct appeal to the District Court of Appeal of the Second Appellate District of the State of Florida. The second motion was based upon alleged fraud in that Petitioner claimed that her accredited service date for employment and pension purposes was January 14, 1969.

As support for the second motion, Petitioner stated that Respondent's State Manager of Labor Relations, Mr. Ron Johnson, made false statements respecting Petitioner's length of service with Respondent and that Mr. Johnson had testified to the same effect at the arbitration hearing. The second paragraph of Mr. Johnson's affidavit filed in opposition to Petitioner's Application to Vacate the Arbitration Award states as follows:

> "Plaintiff was originally hired on September 18, 1967, as a temporary Traffic Operator and resigned on September 20, 1969. She was again rehired as a temporary Traffic Operator on December 1, 1969, and again resigned on September 1, 1973. On June 19, 1974, she was hired as a full-time operator. On November 19, 1978, she was pro-

> moted to a Service Representative, and remained in that position until she was terminated on July 10, 1989. The Plaintiff was terminated for violation of her Decision-Making Leave, attitude, over-all work record, and continued insubordinate behavior."

At no time did Mr. Johnson ever claim that Petitioner's seniority date was June 19, 1974 as Petitioner contends. In fact, on March 23, 1992, Petitioner had sent a letter to Respondent's Vice President-Human Resources requesting certain information as provided by federal law. Petitioner's letter and Respondent's response thereto are set forth as Item E in Respondent's Appendix. Respondent's response states clearly:

> "As a result of this period of service, your service was bridged and your accredited service date is January 14, 1969 which is the date used to calculate your vested pension." (Emphasis added)

Subsequent to the filing of the aforesaid Motions for Relief from Judgment, on April 6, 1992, Petitioner filed a Notice of Appeal to the trial court's Final Judgment Confirming the Arbitrator's Award. Subsequent to the filing of this Notice of Appeal, Respondent sent the trial court a letter advising the trial court that it did not have jurisdiction to proceed on Petitioner's Motions for Relief from Judgment by virtue of her filing a direct appeal to the Final Judgment Confirming the Arbitrator's Award. A copy of said letter is attached as Item F in Respondent's Appendix to this Brief.

Thereafter, on April 24, 1992, the District Court of Appeal for the Second Appellate District treated one of several Petitions for Writs of Mandamus that she had filed as a Motion to Relinquish Jurisdiction, and the Second District Court of Appeal for the Second Appellate District of the State of Florida relinquished jurisdiction for forty-five days to the trial court in order for Petitioner to obtain a ruling on her Motions for Relief from Judgment. Inasmuch as the filing of a direct appeal removed jurisdiction from

the trial court, the order of Relinquishment revested the trial court with jurisdiction to decide Petitioner's motions. The trial court then denied Plaintiff's Motions for Relief from Judgment on April 29, 1992. Thereafter, Petitioner filed another direct appeal to the Order denying her Motions for Relief from Judgment with the District Court of Appeal for the Second Appellate District of the State of Florida. Said appeal bore Case No. 92-02009, and the District Court of Appeal on October 21, 1992, affirmed Per Curiam the trial court's denial of Petitioner's Motions for Relief from Judgment. A copy of the decision from the District Court of Appeal is set forth as the first Appendix A in Petitioner's Petition.

Regarding Petitioner's initial appeal from the trial court's Order Confirming the Arbitration Award which appeal bears Case No. 92-01328, said appeal was voluntarily dismissed by Petitioner and confirmed by the Second District Court of Appeal for the Second Appellate District of the State of Florida. Copies of the Notice of Voluntary Dismissal and the dismissal by the court pursuant thereto are attached as Item G in Respondent's Appendix to the Brief.

Appellant states at Pages 5 and 6 of her Petition that on June 15, 1992, the Second District Court of Appeal reactivated mandamus Case No. 92-1457 and that this case is currently active without a ruling. This is not correct as all appeals and petitions at this point in time have been ruled upon by the courts to which they have been addressed. A copy of the Per Curiam Opinion of the Second District Court of Appeal of the Second Appellate District affirming the trial court's orders denying Petitioner's Motions for Relief from Judgment is attached as Item H in the Appendix to Respondent's Brief.

REASONS FOR DENIAL OF THE PETITION

I

NO FEDERAL QUESTION HAS BEEN PROPERLY PRESENTED IN THE STATE COURTS BELOW

The Petitioner apparently seeks to invoke the jurisdiction of this Court on the theory that she has been denied Due Process in connection with her seniority and pension rights. (Page 4 of Petitioner's Petition, with a reference to the Employee Retirement Income Security Act ("ERISA") at Page 12 of Petitioner's Petition)

At no point in the proceedings below were pension rights and issues under the Employee Retirement Income Security Act (29 U.S.C.A. 1001 et seq.) ever brought forth. As indicated in the state court trial and appellate proceedings below referenced in the Statement of Facts, the proceedings in the courts involved the issues of whether there was evident partiality on the part of the arbitrator as a basis for vacation of the arbitrator's award and the issue of whether the arbitrator improperly excluded material evidence under Florida law. No issues of pension rights, seniority or ERISA were argued or presented in the Florida Courts.

In fact, Petitioner currently has pending against this Respondent an action in the United States District Court for the Middle District of Florida bearing Case No. 92-1233-CIV-T-23B seeking certain relief against Respondent with respect to alleged claims under the Employee Retirement Income Security Act.

It is a fundamental principle that the United States Supreme Court will not review a federal question unless the question has been properly presented in the state courts. *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1989); *Street v. State of New York*, 394 U.S. 576 (1989). A vague and general appeal to constitutional principles is insufficient as pointed out in *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 77 (1988):

"A generic reference to the Fourteenth Amendment is not

> sufficient to preserve a constitutional claim based upon an unidentified provision of the Bill of Rights. There should be no doubt from the record that a claim under a federal statute or the Federal Constitution was presented in the state courts and that these courts were apprised of the nature or substance of the federal claim at the time and in the manner required by state law." (486 U.S. 77-78)

In this particular matter, it is submitted that the Petitioner has failed to raise any federal or constitutional question in the state courts related to her proceedings to vacate the arbitration award.

THE STATE COURT JUDGMENT RESTS ON AN INDEPENDENT NON-FEDERAL GROUND

It is accepted doctrine that the United States Supreme Court will not review a state court judgment if it appears that the state court judgment rests on an independent non-federal ground. [*Johnson v. State of New Jersey*, 384 U.S. 719, 735-736 (1966)]

The denial of Petitioner's motions in the trial court rests upon an independent non-federal ground. Under Rule 1.540(b) of the Florida Rules of Civil Procedure, a Motion for Relief from Judgment is permitted on the grounds of surprise and fraud as well as on other grounds not relevant to these proceedings. Under Florida law it is the duty of the trial court and not the appellate court to make the determination of whether the facts alleged constitute surprise or fraud, and the trial court has extremely broad discretion. The Florida appellate courts have held that in order to reverse a trial court's ruling on orders denying or granting relief from judgment, there must be a showing of gross abuse of discretion. [*Schwab & Co., Inc. v. Breezy Bay, Inc.*, 360 So.2d 117, 118 (Fla. 3rd DCA, 1978); *Gibbons v. L. W. Blake Memorial Hospital*, 538 So.2d 1386, 1387 (Fla. 2nd DCA, 1989)]

Another of Petitioner's contentions is that a witness allegedly perjured himself by stating that Petitioner's seniority date was June 19, 1974 when it should have been January 14, 1969. As indicated

in the Statement of Facts, at no point did this witness ever claim that Petitioner's seniority for pension purposes was June 19, 1974, but Respondent has maintained at all times that Petitioner's accredited service date for pension purposes is January 14, 1969 which the Company has expressly acknowledged to the Petitioner. Assuming for the sake of argument that some misstatement rose to the level of intrinsic fraud, for such fraud to serve as a basis for relief from a judgment, under Florida law, it must pertain to the issues in the case that were tried or could have been tried. [*DeClaire v. Yohanan*, 453 So.2d 375, 377 (Fla. 1984)]

Finally, under Florida law, proceedings for relief from judgment pursuant to Rule 1.540(b) of the Florida Rules of Civil Procedure are intended to provide relief under a limited set of circumstances, and they are not a substitute for a new trial procedure or for appellate review. [*Fibercrete Homes, Inc. v. Division of Administration, State Department of Transportation*, 315 So.2d 492, 493 (Fla. DCA 4th, 1975); *Pompano Atlantis Condominium Ass'n v. Merlino*, 415 So.2d 153, 154 (Fla. 4th DCA, 1982)]

For the reasons stated above, Petitioner has been afforded complete Due Process under the laws of the State of Florida.

NO DENIAL OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION HAS OCCURRED AS A RESULT OF THE ACTIONS OF THE FLORIDA TRIAL AND APPELLATE COURTS

As stated previously, Petitioner has made only generalized claims of a lack of Due Process which is not sufficient under the cases cited previously. A review of the record in this proceeding would show that Petitioner has had the matter of her discharge from employment heard by an independent impartial arbitrator in a trial-type hearing with an independent counsel of her own choosing, and Plaintiff acting in propria persona, commenced an action in accordance with Florida state law to vacate the arbitration award in favor of Respondent. When Petitioner was unable to convince the trial

court to vacate the arbitration award, Petitioner filed a direct appeal in accordance with Florida law with the District Court of Appeal for the Second Appellate District of the State of Florida. Prior to the filing of this appeal, Plaintiff filed Motions for Relief from Judgment as previously discussed which, when denied, were the subject of a separate appeal by Petitioner to the District Court of Appeal for the Second Appellate District of the State of Florida. In addition, Petitioner has filed various Writs of Mandamus with the District Court of Appeal as well as the Florida Supreme Court essentially alleging the same types of claims as set forth in the instant Petition for Writ of Certiorari. Petitioner has received the attention of the District Court of Appeal as well as the Florida Supreme Court with respect to her alleged grievances. Clearly under this scenario, Plaintiff has been fully afforded Due Process under the Fourteenth Amendment to the United States Constitution.

In summary, Plaintiff has failed to show that a state court has decided a federal question in a manner that either conflicts with a decision of another state court of last resort or a United States Court of Appeals as set forth in the Court's Guidelines in Rule 10. Moreover, since certiorari is predicated under 28 U.S.C.A. Section 1257, Petitioner has failed to show where the Final Judgment of the District Court of Appeal violates her rights under the United States Constitution.

Although Petitioner characterizes her Petition for Writ of Certiorari as being from the decision of the Second District Court of Appeal for the Second Appellate District of the State of Florida in Case No. 92-20009, the decision of the District Court of Appeal must be considered in the context of Petitioner's other appeal which was voluntarily dismissed by her as well as the numerous Petitions for Writs of Mandamus to both the District Court of Appeal for the Second Appellate District of the State of Florida and to the Florida Supreme Court. The decision of the Second District Court of Appeal of the Second Appellate District filed October 21, 1992 merely affirmed Per Curiam the denial by the trial court of Plaintiff's Motions for Relief from Judgment previously set forth in the Statement of Facts of this Brief.

CONCLUSION

The Petition for a Writ of Certiorari should not be granted.

Respectfully submitted,

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No. 92-1387

IN THE

Supreme Court of the United States

OCTOBER TERM 1993

NANCY MCNUTT,
Petitioner,

v.

GTE FLORIDA, INC.,
Respondent.

APPENDIX TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 15 OF THE RULES OF THE UNITED STATES SUPREME COURT

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ATTORNEYS FOR RESPONDENT

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GTE CORPORATION
List of Subsidiary Companies
50% or More Owned (1)
Voting Securities Outstanding and Percentage of Voting Control
Ownership Indicated by Indentation
August 31, 1992

GENERAL ADMINISTRATION, etc.

GTE CORPORATION
- GTE Finance Corporation
  - GTE Finance N.V.
  - GTE Export Factoring Company B.V.
- GTE Global Corporation
- GTE Investment Management Corporation
- GTE Realty Corporation
  - GTE Realty Corporation of Connecticut
  - GTER Incorporated
- GTE REinsurance Company Limited
  - GTE Life Insurance Company Limited
- GTE Service Corporation
- GTE Shareholder Services Incorporated

TELEPHONE OPERATIONS

TELEPHONE OPERATING COMPANIES
- GTE Alaska Incorporated
- GTE California Incorporated
  - GTEL
- GTE Florida Incorporated
  - GTE Communications Corporation
  - GTE Ventures Corporation
- GTE Hawaiian Telephone Company Incorporated
  - GTE Hawaiian Tel Insurance Company Incorporated
  - The Micronesian Telecommunications Corporation
- GTE North Incorporated
  - GTE Midwest Incorporated (shell)
  - GTW Telephone Systems Incorporated
- GTE Telecom Marketing Corporation
- GTE Northwest Incorporated
  - GTE West Coast Incorporated
- GTE South Incorporated

TELEPHONE OPERATIONS (Continued)

TELEPHONE OPERATING COMPANIES (Continued)

GTE Southwest Incorporated
GTSW Holding, Inc.
GTE Intech, Inc.
GTE Venezuelan Telephone Incorporated
VenWorld Telecom, C.A.

LA COMPAGNIE DE TELEPHONE ANGLO-CANADIENNE/
ANGLO-CANADIAN TELEPHONE COMPANY
British Columbia Telephone Company
Canadian Telephones and Supplies Ltd.
MPR Teltech Ltd.
Pacific Design Engineering Ltd.
Pacific Design Engineering, Inc.
TSI Telecommunication Services International Inc.
Microtel Limited
Microtel International Inc.
Pachena Industries Ltd.
Pachena Scientific & Industrial Electronics Inc.
Pachena Scientific & Industrial Electronics of Washington Inc.
North-West Telephone Company
BC TEL Mobility Cellular Inc.
B.C. Mobile Ltd.
353154 B.C. Ltd.
B.C. Technical Services Ltd.
B.C.T. Risk Management Corporation
BTE Business Telecom Equipment Limited
BTE Datacom Systems Ltd.
ISM Information Systems Management (B.C.) Corporation
SRI Strategic Resources Inc.
Telecom Leasing Canada (TLC) Limited
B.C. Tel Financial Corporation
Viscount Industries Limited
125,747 B.C. Ltd.
137,277 Canada Limited
160,324 Canada Limited
296,604 B.C. Ltd.
3S Systems Support Services Ltd.
336,872 B.C. Ltd.
370298 B.C. Ltd.

TELEPHONE OPERATIONS (Continued)

TELEPHONE OPERATING COMPANIES (Continued)

375,745 B.C. Ltd.
403806 B.C. Ltd.
GTE Directories Canada Limited
Quebec-Telephone
The Bonaventure and Gaspe Telephone Company, Ltd.
GTE Holdings (Canada) Limited
Compania Dominicana de Telefonos, C. por A.

GTE INTERNATIONAL TELEPHONE INCORPORATED
Codetel Computer Graphics Holdings B.V.
Codetel Computer Graphics, S.A.
Informatica y Telecomunicaciones, C. por A.

GTE DATA SERVICES INCORPORATED
GTE Data Services International Incorporated

GTE VANTAGE INCORPORATED

INFORMATION SERVICES

GTE INFORMATION SERVICES INCORPORATED
GTE Education Services Incorporated
GTE Government Information Services Incorporated
GTE Health Systems Incorporated
T.K. Development Company Ltd.
GTE Interactive Services Incorporated
GTE TeleMessager Incorporated
GTE IS Service Corporation
GTE Marketing Services Incorporated
GTE Discovery Publications, Incorporated
GTE Marketing Services Integrated Management Group Incorporated
GTE Market Resources Incorporated
GTE Telecommunication Services Incorporated

GTE TELECOM INCORPORATED

GTE DIRECTORIES CORPORATION
General Telephone Directory, C.A.

INFORMATION SERVICES (Continued)

GTE DIRECTORIES CORPORATION (Continued)

General Telephone Directory Company C. por A.
General Telephone Directory Company (Thailand) Ltd.
GTE Directories (Asia) Limited
GTE Directories (B) SDN.BHD.
GTE Directories Corporation Limited
GTE Directories Corporation S.A.
GTE Directories Distribution Corporation
GTE Directories GmbH
GTE Directories Corporation (Guam)
GTE Directories (HK) Limited
GTE Directories Printing Corporation
GTE Directories Publishing Corporation
GTE Directories Sales Corporation
  GTEX Corporation
GTE Directories Service Corporation
  Gronseth Directory Service Company
GTE Marketing Services Limited
GTE National Marketing Services Corporation

MOBILE COMMUNICATIONS

GTE MOBILE COMMUNICATIONS INCORPORATED
GTE Mobile Communications Service Corporation
GTE Mobile Communications International Incorporated
Asheville Metronet, Inc.
Augusta Metronet, Inc.
Carolina Metronet, Inc.
Danville Metronet, Inc.
Fayetteville Metronet, Inc.
Florence Metronet, Inc.
Georgia Metronet, Inc.
GTE Mobilnet of the Southeast Incorporated
South Carolina Metronet, Inc.
Triad Metronet, Inc,
Tuscaloosa/Florence Holdings, Inc.
W & J Metronet, Inc.

GTE AIRFONE INCORPORATED
  GTE Railtone Incorporated

MOBILE COMMUNICATIONS (continued)

GTE MOBILNET INCORPORATED
- GTE Cellular Communications Corporation
- GTE Mobilnet of California Incorporated
- GTE Mobilnet of Cleveland Incorporated
- GTE Mobilnet of Hawaii Incorporated
- GTE Mobilnet of Indianapolis Incorporated
- GTE Mobilnet of New York, Inc.
- GTE Mobilnet of Portland Incorporated
- GTE Mobilnet of Tampa Incorporated
- GTE Mobilnet Sales Corp.
- GTE Mobilnet Service Corp.
  - GTE Mobilnet of Austin Incorporated
  - GTE Mobilnet of Houston Incorporated

OTHER OPERATIONS

GTE COMMUNICATIONS SERVICES INCORPORATED
- GTE Sprint Communications Corporation

GTE LEASING CORPORATION
- Kalama Grain Terminal, Inc.

GTE PRODUCTS OF CONNECTICUT CORPORATION

GTE COMMUNICATION SYSTEMS CORPORATION
- AG Communication Systems Corporation
- GTE Consumer Communications Products Corporation

GTE CONTROL DEVICES INCORPORATED
- Dominican Overseas Trading Company

- GTE Control Devices of Puerto Rico Incorporated

GTE INTERNATIONAL INCORPORATED
- Concord Lighting Limited
  - Concord Lighting International Limited
- Concord S.A.
- FLOWIL International Lighting (Holding) B.V.
- GTE Australia Pty. Limited
  - GTE New Zealand Limited
- GTE Comercial Ltda.

OTHER OPERATIONS (continued)

GTE PRODUCTS OF CONNECTICUT CORPORATION (Continued)
GTE INTERNATIONAL INCORPORATED (continued)

GTE Communications Installation Incorporated
GTE do Brasil Comercio e Participacoes Ltda.
GTE Export Corporation
GTE de Panama, S.A.
GTE Sylvania S.A.
G.T.E. Sylvania, S. A. de C.V.
GTE Sylvania S.A.
GTE Sylvania S.A.
GTE Sylvania S.A.
GTE Far East (Services) Limited
GTE France S.A.
GTE Industries Incorporated
GTE Iran Incorporated
GTE Licht GmbH
GTE Lighting Limited
GTE Sylvania Limited
Linolite Limited
GTE Lighting (UK) Limited
Endura Viking Lamps Limited
GTE Products (UK) Limited
GTE Rotaflex Limited
Concord Controls Limited
Concord Lighting Pty. Ltd.
Lumiance Pty. Ltd.
Concord Systems SA
Lytevision Limited
Rotaflex Investments Limited
Rotaflex Management Services Limited
GTE Sylvania (GB) Limited
GTE Overseas Corporation
GTE Precision Materials (France)
GTE S.A.
GTE Sistemas de Informacao Ltda.
GTE Sylvania AB
GTE Sylvania A/S
GTE Sylvania A/S
G.T.E. Sylvania, Greek Commercial Corporation for Electric Lamps

OTHER OPERATIONS (continued)

GTE PRODUCTS OF CONNECTICUT CORPORATION
(Continued)
GTE INTERNATIONAL INCORPORATED (continued)

GTE Sylvania Ltda.
GTE Sylvania N.V.
GTE Sylvania Oy
GTE Sylvania, S.A.
GTE Sylvania S.A.
GTE Sylvania, S.A. de C.V.
GTE Sylvania S.A. Electronics, Quimica, Industrial y Comercial
GTE Sylvania Canada Limited
Electrolier Corporation
GTE Sylvania Gesellschaft m.b.H.
GTE Sylvania Limited
GTE Sylvania S.p.A.
GTE UK Holdings Ltd.
Lumiance B.V.
Lumiance N.V.
Lumiance GmbH
Servi-Empire Assistencia Tecnica de Radio e Televisao S.A.
S&I Electric N.V.
Sylvania Electronica Limitada

GTE LABORATORIES INCORPORATED

GTE OPERATIONS SUPPORT INCORPORATED
West Indies Realty Company

GTE PRODUCTS CORPORATION
GTE Transport Incorporated
Lamparas Especiales de Mexico, S.A. de C.V.
SunoBrands Incorporated
Syltron Inc.
Sylvania Componentes Electronicos, S.A.
Sylvania Lighting Services Corp.
Sylvania Manufacturing Company
Sylvania Realty Corporation

OTHER OPERATIONS (continued)

TELEVAC, INC.

GTE VALENITE CORPORATION
Valenite GTE de Mexico, S.A. de C.V.
Valenite-Modco Caribe, Inc.
Valenite International, Inc.
Valenite-Modco GmbH
Valenite-Modco Industria e Comercio, Ltda.
Valenite-Modco International, Inc.
Nippon Valenite-Modco K.K.
Valenite-Modco Limited
Valenite-Modco Pacific Co., Ltd.
Valenite-Modco PTE, Ltd.
Valenite-Modco SARL
Valenite-Modco S.r.l
Valenite-Modco (U.K.) Limited

CONTEL CORPORATION AND SUBSIDIARIES

GENERAL ADMINISTRATION, etc.

CONTEL CORPORATION

Contel Capital Corporation

Contel Credit Canada Ltd.
Contel Management Company

Continental Telephone International Finance Corporation
Perimeter Insurance Company

West Indies Directory Company Limited

TELEPHONE OPERATIONS

Contel Advanced Systems of Indiana, Inc.
GTE Customer Networks, Inc.

Contel Material Management Company

TELEPHONE OPERATIONS (continued)

Contel Network Signaling Company

Contel North Incorporated (shell)
Contel of Arkansas, Inc. (d/b/a GTE Arkansas)
Contel of California, Inc.
Contel Advanced Systems, Inc.

Contel of Illinois, Inc. (d/b/a GTE Illinois)
Contel of Indiana, Inc. (d/b/a GTE Indiana)
Contel of Iowa, Inc. (d/b/a GTE Iowa)
Contel of Kansas, Inc. (d/b/a GTE Systems of Arkansas; GTE Systems of Iowa)
GTE Arkansas Incorporated (shell)
Contel of Kentucky, Inc. (d/b/a GTE Kentucky)
Contel of Maine, Inc. (d/b/a GTE Maine)
Contel of Minnesota, Inc. (d/b/a GTE Minnesota)
Contel of Missouri, Inc. (d/b/a GTE Missouri)
Contel of New Hampshire, Inc. (d/b/a GTE New Hampshire)
Contel of North Carolina, Inc. (d/b/a GTE North Carolina)
Contel of North Dakota, Inc. (d/b/a GTE North Dakota)
Contel of Pennsylvania, Inc. (d/b/a GTE Pennsylvania)
Contel of South Carolina, Inc. (d/b/a GTE South Carolina)
Contel of South Dakota, Inc. (d/b/a GTE South Dakota)
Contel of Texas, Inc. (d/b/a GTE Texas)
Contel of Vermont, Inc. (d/b/a GTE Vermont)
Contel of Virginia, Inc. (d/b/a GTE Virginia)
Contel of West Virginia, Inc. (d/b/a GTE West Virginia)
Contel of the Northwest, Inc. (d/b/a GTE Systems of the Northwest)
Contel of the South, Inc. (d/b/a GTE Systems of the South)
Contel of the West, Inc. (d/b/a GTE West)
Contel RSA, Inc.

Contel Service Corporation

Contel System of Missouri, Inc. (d/b/a GTE Systems of Missouri)
ContelVision, Inc.

Continental Telephone Business Systems, Inc.
(Continental Telephone International Finance Corporation)
Contel of New York, Inc. (d/b/a GTE New York)

TELEPHONE OPERATIONS (continued)

Grand Bahama Telephone Company Limited (shell)
J.B.N. Telephone Company, Inc. (d/b/a GTE Telephone Company)
The Kansas State Telephone Company (d/b/a GTE of Eastern Missouri)

CELLULAR COMMUNICATIONS

CONTEL CELLULAR INC.

CCI Sales Corporation
Contel Cellular of Arkansas, Inc.
Contel Cellular of California, Inc.
Contel Cellular Holding, Inc.

Contel Cellular of Anniston, Inc.
Dannon Communications, Inc.
Contel Cellular of Birmingham, Inc.
Contel Cellular of Birmingham II, Inc.
Contel Cellular of Chattanooga, Inc.
Contel Cellular of Chattanooga II, Inc.
Contel Cellular of Clarksville, Inc.
Cumberland Cellular Telephone Company, Inc.
Contel Cellular of Florence, Inc.
Florence Cellular Telephone Company, Inc.
Contel Cellular of Gadsden, Inc.
Contel Cellular of Knoxville, Inc.
Contel Cellular of Knoxville II, Inc.
Contel Cellular of Knoxville III, Inc.
Contel Cellular of Knoxville IV, Inc.
Contel Cellular of Lexington, Inc.
Contel Cellular of Louisville, Inc.
Contel Cellular of Louisville II, Inc.
Contel Cellular of Memphis, Inc.
Contel Cellular of Memphis II, Inc.
Contel Cellular of Nashville, Inc.
Contel Cellular of Nashville II, Inc.
Contel Cellular of Nashville III, Inc.
Contel Cellular of Tennessee, Inc.
Contel Cellular of Chautauqua, Inc.
Contel Cellular of Tri-Cities, Inc.

CELLULAR COMMUNICATIONS (continued)

CONTEL CELLULAR INC. (continued)

Contel Cellular of Tri-Cities II, Inc.
Contel Cellular of Tuscaloosa, Inc.
Contel Cellular International, Inc.
Contel Cellular of Davenport, Inc.
Contel Cellular of Illinois, Inc.
Contel Cellular of Indiana, Inc.
Contel Cellular of Mobile, Inc.
Contel Cellular of New Hampshire, Inc.
Contel Cellular of New York, Inc.
Contel Cellular of Richmond, Inc.
Contel Cellular of South Dakota, Inc.
Contel Cellular of the Adirondacks, Inc.
Contel Cellular of the Gulf, Inc.
Contel Cellular of the Southwest, Inc.
Contel Cellular of Vermont, Inc.
Movitel
Weare Necma, Inc.

FEDERAL SYSTEMS

CONTEL FEDERAL SYSTEMS, INC.

GTE GOVERNMENT SYSTEMS CORPORATION
GTE Government Systems Overseas Corporation

GTE Systems Corporation

Sylvania Technical Systems, Incorporated
Time and Space Processing, Inc.

Contel Page International Holdings, Inc.
Contel Page International, Inc.
Conagro Telecommunications, S.A.
EGAP Electronics, S.A.

Page Europa, S.p.A.
Contel Systems, S.A.
MTX Italia
Continential Telephone Do Brasil, Ltd.

FEDERAL SYSTEMS (continued)

CONTEL FEDERAL SYSTEMS, INC. (continued)

Independent Communications, Inc.
Page Saudi Arabia Services, Ltd.
Telecommunication Science Associates, Inc.
Unitel International, Inc.

OTHER OPERATIONS

GTE International Communication Services Corporation
Sovinet
EDN (d/b/a Sovintel)

GTE SPACENET CORPORATION
Contel ASC Company Limited
GTE Spacenet International Corporation
GTE Spacenet Satellite Services Corporation

APPENDIX B

ARTICLE I
UNION RECOGNITION

SECTION 1. Union Recognition.

1.1 The Company recognizes the Brotherhood as-sole and exclusive bargaining representative of the employees in the Company as set forth on Exhibits A-1, A-2, A-3 of Appendix III, for the purpose of collective bargaining in respect to rates of pay, hours of employment, and other conditions of employment. Excluded are all personnel as defined in section 2(11) of the Labor Management Relations Act of 1947,, as amended, and, in addition, all guards and watchmen, and personnel performing confidential duties for the Company.

ARTICLE II
COMPANY - UNION RELATIONS

SECTION 1. Company - Union Relations.

1.1 The Brotherhood agrees that the employees in the bargaining unit will perform their respective Company duties loyally, efficiently and continuously under the terms of the contract. The Brotherhood further agrees that there will be no strike, sit-down or other concerted cessation or delay of work during the continuance of this Agreement. The Company on its part agrees that there shall be no lockouts. It is the mutual desire of both parties hereto to provide uninterrupted and continuous service.

1.2 The Brotherhood agrees that the members of the Local Union will use their best endeavors to protect the interest of the Company, to conserve its property and to furnish the highest quality of service. The Brotherhood and the Local Union will cooperate with the Company in promoting the welfare and advancement of the industry.

ARTICLE XVI
GRIEVANCES

SECTION 1. A grievance is hereby defined as any alleged dispute or controversy arising out of the interpretation or application of this Agreement covering the employee or employees concerned. Unless by mutual consent a substitute procedure is adopted, grievance matters shall be processed in accordance with the procedure set forth in this Article XVI.

SECTION 2. When any matter referred to in Section 1 of this Article arises, it shall be processed as follows:

Step 1. An employee or group of employees may present the grievance verbally or in writing, in person or through the Union, to the immediate supervisor who has supervision over the work performed by the employee. A grievance presented in writing shall receive a written reply by the supervisor and be given in person or mailed within two (2) working days.

Step 2. In the event the foregoing procedure as outlined in Step 1 fails to produce a satisfactory solution of a written grievance, the grievance shall be presented within five (5) working days after completion of Step 1 to the appropriate Area Manager or Department Head (General Offices) or his/her designated representative.

The Company representatives shall meet with the Union, or with any individual employee or group of employees as outlined in Section 5 of this Article XVI, not later than ten (10) working days after receipt of the formal presentation and a decision shall be given in person or by mail within five (5) working days after the meeting.

Step 3. In the event the foregoing procedure as outlined in Step 2 fails to produce a satisfactory solution, the grievance shall be presented within five (5) working days after completion of Step 2 to the Vice President-Human Resources or his/her designated representative.

GRIEVANCES(Continued)
SECTION 2. (Continued)
Step 3. (Continued)

The Company representatives shall meet with the Union, or with any individual employee or group of employees as outlined in Section 5 of this Article XVI, not later than ten (10) working days after receipt of the formal presentation and a decision shall be given in person or by mail within five (5) working days after the meeting. If the grievance is not settled satisfactorily within five (5) working days after discussions with the Union have been completed, the grievance, if arbitrable, may then be submitted to arbitration as provided in Section 1, Article XVII.

SECTION 3. Before a grievance may be submitted for action, in the appropriate section of Step 1, it shall be prepared in writing in quadruplicate, and be signed by the employee. The copies of the grievance shall be distributed as follows: two (2) to the immediate supervisor, one (1) to the Local Union and one (1) to the employee.

SECTION 4. Any grievance presented in writing to the employee's immediate supervisor shall contain a brief but clear statement of the problem or condition, will identify the aggrieved employee, and specify the provision or provisions in the Union Agreement, if any, which allegedly have been violated,

SECTION 5. - In the event any individual employee or any group of employees choose to present a grievance for themselves, the Company representatives will notify the Local Union representatives of the fact that such grievance is being presented and will give such Local Union representatives opportunity to be present during the presentation of such grievance.

SECTION 6. Once a grievance has been presented by the Union to the Company, representatives of the Company shall not discuss the grievance with the aggrieved employee or employees without affording the Local Union representative an opportunity to be present.

SECTION 7. The Union agrees the Company shall assume no responsibility for and shall not be required to consider any grievance unless the grievance shall have been presented in writing,

GRIEVANCES(Continued)
SECTION 2. (Continued)
under, and in accordance with the provisions of this Article XVI, "Grievances," and the presentation made within ten (10) calendar days, unless extenuating circumstances prevail, after its alleged original occurrence.

SECTION 8. 'Working Days,' as used in this Article XVI, shall not include Saturdays, Sundays or Holidays.

SECTION 9. Any written documentation in possession of the Company which influences its decision on any matter in dispute, shall also be made available to the Local Union. Any written documentation in possession of the Union which influences its decision on any matter in dispute shall also be made available to the Company.

SECTION 10. The Union has the right to initiate grievances in accordance with the provisions of this Article.

ARTICLE XVII
ARBITRATION

SECTION 1. In the event a grievance is not resolved by the parties under the provisions of Article XVI, the matter may be submitted to arbitration. This request must be submitted by the Union within thirty (30) calendar days after failure of settlement in the Grievance Procedure, except that in the instance of discharge, submission shall be made within ten (10) calendar days.

SECTION 2. A request for submission to arbitration must be in writing and signed by an authorized representative of the Union. The written request shall restate the grievance as originally submitted under Article XVI, and shall certify that the parties failed to reach a satisfactory settlement in the Grievance Procedure as set forth in Article XVI. Appropriate representatives of the parties shall meet within ten (10) days to agree upon the statement of the question to be arbitrated.

SECTION 3. The parties shall then jointly request the American Arbitration Association to name a panel of five (5) arbitrators. The arbitrator shall be selected from said panel by the parties in the following manner:

ARBITRATION(Continued)
SECTION 3. (Continued)

3.1 One party shall strike one (1) name from said panel. The other party shall then strike two (2) names from said panel and the first shall then strike one (1) name from said panel. The person whose name is not stricken from the panel shall be the arbitrator. The party who strikes the first name from the panel shall be determined by lot.

SECTION 4. The arbitrator shall be selected within ten (10) calendar days after service of the written demand for arbitration.

SECTION 5. Hearings shall be started immediately after selection of the arbitrator unless the arbitrator is not immediately available, in which case the parties may mutually agree to meet at the convenience of the arbitrator. If, however, the arbitrator should be unable to attend hearings within a period of twenty (20) calendar days, a substitute shall be named.

SECTION 6. After the arbitrator has been chosen by the foregoing procedure, the arbitrator shall meet jointly and hear the evidence of both sides and shall render a decision.

SECTION 7. The expenses incurred in procuring an arbitrator and any miscellaneous expenses incurred by the arbitrator shall be borne equally by the parties.

SECTION 8. The arbitrator shall have jurisdiction and authority to interpret, apply or determine compliance with the provisions of this Agreement or of any agreement made supplementary hereto and to render decision of award thereof, but shall have no authority to add to, subtract from, alter or modify in any way, the provisions of this Agreement or any established routines, procedures, rules, regulations, or practices of the Company. The arbitrator shall also be limited in his/her authority to a review and determination of the specific grievance submitted for arbitration. The decision of the arbitrator, within the scope of this paragraph of Article XVII, shall be final and binding upon both parties.

SECTION 9. When in question, back pay shall be limited to the date of discharge less any remuneration received from any source. In making such an award, the arbitrator shall be governed by the make whole concept.

APPENDIX C

American Arbitration Association

VOLUNTARY ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

I.B.E.W., Local 824
=and=
G.T.E. of Florida
GR: (Union #367-S-89) (Company #89-S-243)

CASE NUMBER: 33 300 00011 89

AWARD OF ARBITRATOR(S)

I (WE), THE UNDERSIGNED ARBITRATOR(S), having been designated in accordance with the arbitration agreement entered into by the above-named parties, and dated and having been duly sworn and having duly heard the proofs and allegations of the parties, AWARD as follows:

THE GRIEVANCE IS DENIED AND DISMISSED.

MAY 21, 1991 — (Date)

/s/ W. Gary Vause — (Signature of Arbitrator)

STATE OF Florida
COUNTY OF Pinellas } SS: 226-64-3836

On this 21st day of May, 1991, before me personally came and appeared W. Gary Vause, to me known and to me known to be the individiual(s) described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

/s/ Alice Rufner
Notary Public, State of Florida
My Commission Expires May 20, 1992
Bonded by Western Surety Company

AMERICAN ARBITRATION ASSOCIATION

Voluntary Labor Arbitration

In the Matter of Arbitration
Between:

GENERAL TELEPHONE COMPANY OF FLORIDA, INC.

-and-

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO LOCALUNION 824

AAA No. 33-300-00011-89
Grievant: Nancy C. McNutt/ Discharge
Hearing Date: March 25, 1991
Hearing Closed: April 22, 1991
Award Date: May 21, 1991

Arbitration Opinion and Award

Before:

W. Gary Vause
Arbitrator
1401-61st Street, South
St. Petersburg, Florida 33707

APPEARANCES

For the Grievant:

Bruce Fein, Esq.
562 Innsbruck Avenue
Great Falls, Virginia 22206

Guy Langlais
Assistant Business Manager
IBEW Local 824
6603 East Chelsea
Tampa, Florida 33610

Witnesses called by the Grievant:

Nancy C. McNutt, Grievant

Sally McNutt

Albert Michetti

For the Company:

Lorin H. Albeck, Esq.
Legal Counsel
GTE of Florida, Inc.
One Tampa City Center
Post Office Box 110
Tampa, FL 33601

Ronald B. Johnson
State Manager - Labor Relations

Malcolm King
State Director - Human Relations

Albert Michetti
Administrator - Labor Relations

Kay Ehle, Paralegal

Robert Stoner

Michael Keetley

Edward O'Brien

Witnesses called by the company:

Albert Michetti

Darlene Chadwick

Bennie Almas

Pat Robinson

Cecelia Hopper

David Stewart

JURISDICTION AND BACKGROUND OF PROCEEDINGS

This is a grievance arbitration case based upon an alleged violation of the collective bargaining agreement between General Telephone Company of Florida, Inc., and the International Brotherhood of Electrical Workers, AFL-CIO Local Union 824, with effective dates covering the period August 16, 1987 through August 18, 1990. The Arbitrator's jurisdiction arises from Article XVII (Arbitration) of that agreement. The Arbitrator's legal authority arises from Chapter 682 of the Florida Statutes (1989).

Unable to resolve their differences through local grievance procedures, the parties submitted their dispute to the undersigned Arbitrator pursuant to the rules and procedures of the American Arbitration Association. An evidentiary hearing was held at the Company's offices in Tampa, Florida, on March 25, 1991. Both parties were represented by legal counsel, who presented documentary evidence and the sworn testimony of witnesses. A court reporter was present and made a verbatim transcript of the proceedings. The evidentiary hearing was concluded on March 25, 1971, but the parties stipulated that the hearing would remain open until such time as the Arbitrator received post-hearing submissions. The hearings were closed on April 22, 1991, upon the American Arbitration Association's receipt of both post-hearing briefs and the two volumes of transcripts. This opinion and award is based upon the following issue, as stipulated by the parties:

ISSUE

Was the grievant discharged for just cause, and if not, what should the remedy be?

RELEVANT CONTRACT PROVISIONS

Article II (Company-Union Relations), Section 1. Paragraph 1.4:

The management of the business and the direction of the working force shall remain with the management of the Company, including, but not limited to, the right to hire, to discipline, or discharge employees for just cause, to use improved methods, material or equipment, to determine work assignments and tours, to develop and administer work standards and performance requirements, to decide the number of employees needed at any particular time or place and to be the sole judge of the quality and acceptability of service rendered to the customer, except as such rights may be directly and specifically limited by this Agreement.

Article VIII (Sickness Disability Benefits), Section 1, Paragraph 1.4:

The Company reserves the right to have any employee examined by a doctor selected by the Company at the Company's expense, provided the employee is absent due to sickness, as defined herein, or the Company has a reasonable basis to believe the employee is sick or the employee's physical or mental condition is such that the employee may endanger himself/herself or other employees. Unless the Company exercises its right under this subsection it shall not pay the employee for the lost scheduled work time spent for doctor appointments. All regular employees are expected, whenever possible, to arrange and schedule doctor appointments during nonworking hours. In addition, employees are expected to give their immediate supervisor one (1) day advance notice prior to such doctor appointments provided there are not extenuating circumstances.

Article VIII (Sickness Disability Benefits), Section 2. Paragraphs 2.1, 2.1.2 and 2.2:

Sickness is the inability of an employee to perform work on account of physical or mental illness or injury, other than accidental injury arising out of and in the course of employment by the Company, or employment by any other employer, confining the employee to his/her home or hospital, except in unusual circumstances as substantiated by a medical doctor's letter and verified by the Company's Medical Department. This section shall not be construed as limiting the privilege of receiving treatment in the office of a physician.

In order to qualify for sickness disability benefits for mental illness, and upon the recommendation of competent medical authority, the employee must furnish the Company with a diagnostic report from a qualified neurologist or psychiatrist that the mental illness (other than alcoholism or drug addiction) is sufficiently serious to prevent the employee from performing productive work for the Company. In such cases, sickness disability payments will be made conditional that the individual actively undergoes a prescribed program of treatment.

Abuse of the sickness disability benefit privileges as outlined in Sections 1 and 2 of this Article, with respect to eligibility for benefits and/or location of confinement, shall constitute just cause for immediate discharge.

Article XII (Discharge for Cause), Section 1, Paragraph 1.1:
No provision of the Agreement shall be construed to bar the authority and right of the Company to terminate the service of an employee for just cause.

Article XII (Discharge for Cause), Section 3, Paragraph 3.1:
Provided, discharges involving allegations of dishonesty or improper behavior while on duty (including the willful or intentional disruption of electronic switching systems) shall be immediate.

Article XVII (Arbitration), Section 8
The arbitrator shall have jurisdiction and authority to interpret, apply or determine compliance with the provisions of this Agreement or of any agreement made supplementary hereto and to render decision of award thereof, but shall have no authority to add to, subtract from, alter or modify in any way, the provisions of this Agreement or any established routines, procedures, rules, regulations, or practices of the Company. The arbitrator shall also be limited in his/her authority to a review and determination of the specific grievance submitted for arbitration. The decision of the arbitrator, within the scope of this paragraph of Article XVII, shall be final and binding upon both parties.

FINDINGS OF FACT

Legal counsel for both parties proposed extensive findings of fact in their respective post-hearing briefs. The Arbitrator has considered those proposed findings, and has carefully studied both volumes of the transcript. In the interest of brevity, the essential facts considered most important by the Arbitrator are distilled into the following summary.

The International Brotherhood of Electrical Workers, AFL-CIO Local Union 824 (hereinafter "the Union") , filed a grievance on July 12, 1989 on behalf of Nancy C. McNutt (hereinafter "the Grievant"), contesting her discharge. The Grievant was initially employed as a long-distance operator by General Telephone Company of Florida, Incorporated (hereinafter "the Company"), on September, 18, 1967. With the exception of two brief periods of absence occasioned by her resignations in 1969 and 1973, she was continuously employed by the company until the date of her discharge on July 10, 1989. From November 19, 1978 until the date of her discharge, she was employed in the position of service representative.

Service representatives receive calls from existing and new customers concerning problems, additions or changes in telephone service. As a service representative, the Grievant sat at a workstation with a computer terminal used to access customer records and process orders; she wore a headset plugged into a telephone to receive incoming calls. The Grievant received training to perform the duties of a service representative, and had ready access to the Company's Basic Handbook and Reference Manual, which contains specific instructions relating to procedures and standards. Supervisors were available at all times to assist as needed.

The Grievant's supervisor, Darlene Chadwick, reviewed the performance of those employees under her supervision on a monthly basis. The Grievant's work performance was excellent until September and October 1986, when she experienced an increase in absenteeism. Consequently, she failed to meet the Company's absenteeism standards for 1986, and was warned that she must improve her attendance.

She also began to exhibit signs of recalcitrance and poor attitude during the latter part of that year, problems which later would increase in severity. In December 1986, she refused to sign the eth-

ical standards certification as required by supervision, stating that she already had signed an ethical standards certification when she was first employed, and that she therefore believed that she should not be required to sign another one.

By early 1987, the Grievant began to express concerns that she was being "tested" by the Company with "fake" customer calls to her station. On February 19, 1987, her supervisor met with her to discuss their respective concerns. The Grievant claimed that she had kept a record of the allegedly fake calls, but declined to supply such evidence to management. Her supervisor told her that the Company was not making fake calls to test her. However, the Grievant apparently persisted in her belief that such calls were being made, and asked management to stop the practice.

Although the Grievant's performance was good during the first six months of 1987, she again experienced excessive absenteeism beginning in April 1987. She was advised that she must make immediate improvement or face disciplinary action. On October 7, 1987, as a result of her continued attendance problems, she was placed on an "On-the-Job Contact" (OJC), the informal first step of the Company's progressive discipline program.

On December 9, 1987, the Grievant and other service representatives received a briefing on new procedures from their supervisor, Ms. Chadwick. Ms. Chadwick explained that each representative would be required to make outgoing calls to customers in an effort to sell additional products and services. The Grievant refused to accept her list of calls. Ms. Chadwick warned the Grievant- that her refusal would constitute insubordination. Subsequent meetings were held that day between the Grievant and Ms. Chadwick, including a meeting with Mr. Stewart, the CSOC Manager. Mr. Stewart explained that the deregulation of the telephone industry made it necessary for the Company to become more aggressive in marketing its services, and that part of the service representative's work must of necessity including selling.

On January 6, 1987, Ms. Chadwick reviewed the Grievant's worksheet and expressed a variety of concerns, including her need to improve sales results, her failure to use proper procedures, and an incident of the Grievant sleeping at her workstation. Again, the Grievant displayed a hostile attitude on the subject of sales, and stated that she did not handle "real customers," but only received "test calls." She reiterated her firm resistance to any role as sales-

person. In spite of Ms. Chadwick's lengthy explanations of the need for effective salesmanship and her denials that test calls were being made, the Grievant apparently remained unconvinced and continued to exhibit similar problems throughout the remaining period of her employment with the Company.

In January 1988, management reviewed with the Grievant her failure to handle numerous calls in accordance with the Customer Contact Guidelines. Because she continued to perform inconsistently with supervisory instructions and Company Guidelines, the Grievant was placed on an On-the-Job-Contact on January 29, 1988, and advised that immediate and sustained improvement must be made.

On June 24, 1988, Ms. Chadwick reviewed with the Grievant supervisory observations which had revealed that she was again handling customer calls in a manner inconsistent with supervisory instructions and Company Guidelines. In response, the Grievant continued to assert that she was handling "test calls" from "fake customers." The Grievant also refused to sign her Periodic Review of Employee Performance form ("PREP" form). It was explained to the Grievant that Company policy requires that each employee sign the form only to evidence that it was reviewed with the employee. However, the Grievant persisted in her refusal despite warnings that disciplinary action could result from her insubordination. After additional refusals to sign by the Grievant, she was given a written Reminder on June 30, 1988, the first formal step of the progressive discipline system. She was advised that she must change her conduct to avoid more serious discipline.

On July 21, 1988, the Grievant left work and went home sick without notifying a management employee as required by the Company's rules, policies and procedures. This infraction was reviewed with her upon her return to work.

On September 30, 1988, the Grievant was observed at her station repeatedly plugging and unplugging her headset. The effect of this practice was to cause incoming calls to be sent to other service representatives rather than to be received by the Grievant. When questioned by a supervisor, she stated that "I know Meredith is in the back listening to me. I'm just trying to mess her up." (The "Meredith" she referred to was identified as another supervisor.) She continued doing this for a short time even after being told by the supervisor to stop.

Management met with the Grievant the next day to review the incident, and she again reiterated her allegations that she was receiving fake calls. However, she declined requests to come forward with evidence to support her claims. The Union representative who was present at the meeting advised her that notwithstanding her belief, it nevertheless was her duty to handle the calls she received. Mr. Stewart warned her that if she failed to perform her job in a proper manner she would be subject to discharge.

On October 5, 1988, the Grievant was placed on the second formal step of the progressive discipline system, a one-day paid Decision-Making Leave, which essentially was designed to give the Grievant an opportunity to reflect upon and decide whether or not she wished to continue working for the Company. When the Grievant returned to work on October 7, 1988, a follow-up meeting was held with management and she was asked what she wanted to do regarding her employment with the Company. The Grievant responded that she would "stick it out." Ms. Chadwick advised her of the standards of performance that she must meet for the next 24 months, including an absentee objective of 3.0% for the first 12 months and 2.55% for the next 12 months. She also advised the Grievant that she must follow all supervisory instructions. The Grievant agreed to abide by these conditions. The conditions were reiterated in detail in a letter handed to the Grievant on October 7, 1988. She was advised specifically that this was her last opportunity to prove herself to the Company.

The Company again was having problems with the Grievant in early 1989. On January 11, 1989, the Grievant called one of the office clerks to advise that she would be late, but failed to talk directly to a management employee as required by Company rules and procedures. Her supervisor later counseled her about this incident.

On March 8, 1989, the Grievant was counseled for improperly going off-line and making xerox copies of every service order, contrary to Company procedures.

On March 28, 1989, she refused the direct order of a supervisor who instructed her to go on-line at 8:00 a.m. instead of the usual time of 8:30 a.m.

On May 10, 1989, she refused to handle work assigned to her by a THC supervisor. When questioned by Ms. Chadwick, she responded: "I don't do anything that relates to sales." She eventually

accepted the work.

On May 24, she failed to respond to management's request to take a medical examination and refused to follow instructions before leaving work and going home sick. She was recalcitrant and uncooperative when other supervisors attempted to discuss the matter with her before she left work. Mr. Stewart was concerned that the Grievant had been off-line on numerous occasions over the past several months with similar complaints, and he therefore directed that an appointment be arranged for the Grievant with a Company-selected physician. Despite repeated attempts to reach the Grievant at her home by telephone and by personal visits, the Grievant refused to respond. The next day, supervision reviewed the incident with the Grievant and advised her that such behavior was unacceptable.

On June 8, 1989, the Grievant refused to comply with a supervisor's direct order to look up an item in the Reference Manual. The Grievant's response was that the Reference Manual was not worth the paper it was written on. When her conduct was reviewed with her the next day, the Grievant again displayed a hostile and uncooperative attitude.

The final series of incidents which triggered the Grievant's discharge began on June 29, 1989, when the Grievant refused to sign the PREP form following a review by Ms. Chadwick. On two additional occasions, she again refused to comply with management's insistence that she sign the form. Finally, a meeting was held by management with the Grievant on July 3, 1989 to discuss her conduct. Mr. Stewart reviewed the Grievant's overall work record and recited the numerous instances of insubordination and other misconduct by the Grievant which were inconsistent with the terms of her Decision-Making Leave.

After consideration of all factors, management made the decision to discharge the Grievant. On July 10, 1989, when Ms. Chadwick was attempting to arrange a meeting between the Grievant and management to implement the discharge, the Grievant refused to follow Ms. Chadwick's instructions for the Grievant to attend the meeting. She only attended after the Union representative brought her to the meeting, at Mr. Stewart's request. She was discharged on July 10, 1989, and the Union subsequently challenged the discharge under the contractual grievance procedure.

POSITIONS OF THE PARTIES

Legal counsel for both the Company and the Grievant submitted comprehensive post-hearing briefs containing detailed arguments. The following represents only a summary of the major points made by each.

Position of the Company. The Grievant was discharged for just cause, based upon her violation of the terms established in her Decision-Making Leave, her overall work record, her improper attitude, and her insubordinate behavior.

The Company contends that the Grievant's testimony does nothing to refute a documented array of incidents of insubordination, ample evidence of an ongoing improper work attitude, and a demonstrably unsatisfactory work record which was established in considerable detail. The overwhelming weight of the evidence clearly supports Management's decision, and its decision may not be changed unless it was arbitrary, unreasonable or capricious. Discharge is not beyond the limits of reasonableness where there is a refusal to follow supervisory instructions, particularly where the employee has had fair warning and has been given the opportunity to heed that warning. The Company urges the Arbitrator to uphold the discharge.

Position of the Union/Grievant. The Grievant contends that the Company did not have just cause to discharge her. The Grievant was an excellent or exemplary employee of the Company for many years, at least through the latter part of 1986, when absenteeism appeared to raise a problem. At the time of the Grievant's discharge on July 10, 1989, however, absenteeism was not a problem.

Although the Grievant's work performance during the two or three years prior to her discharge was average, she was singled out for criticism and reprimands by her supervisor for work practices that were not considered disciplinary offenses when committed by her coworkers. Therefore, the Company did not treat the Grievant evenhandedly, but unfairly held her to higher standards of work performance than her coworkers.

The Grievant's refusals to sign her PREP forms and her indirect (rather than direct) notification of management of her intention to take sick leave were only inconsequential rule or guideline violations that caused no harm to the Company. The handful of other

so-called insubordinate acts of the Grievant, such as declining to read her Reference Manual when instructed to do so by her supervisors or declining to accept a customer list for outgoing sales calls, were invariably short-lived and insubstantial.

In summary, the Grievant contends that the Company failed to carry its burden of proof to establish just cause for the discharge. The Grievant requests reinstatement with back pay and retroactive seniority, retirement, and any other lost employee benefit rights, with twelve percent (12%) interest on the amount of back pay due, and any other equitable relief.

DISCUSSION AND OPINION

It is always unfortunate when an employee with long years of service is discharged. In such cases, the employee may have invested many years of satisfactory service with the employer before the problems develop which lead to termination. In the instant case, the Company's representative conceded that until the last quarter of 1986, the Grievant's work performance was excellent.

The discharge of an employee who once rendered excellent service also is a great loss to an employer that has invested time and effort in the training of the employee. In the instant case, the Company invested considerable additional time and effort counseling the Grievant in the last few years in attempts to improve her performance.

Employees must recognize that employment is not a matter of absolute right; a condition of continued employment is adherence to the reasonable rules of the workplace. Those rules may be written and published, as was the case with the Company's Handbook and Reference Manual, Customer Contact Guidelines and other sources. Many workplace requirements are simply based on common sense, regardless of whether they are written or not. For example, it is universally understood that employees may not conduct themselves in an insubordinate manner toward supervision with impunity.

Insubordination has been defined as "the showing of improper respect to authorized supervision." *Roman Ceramics Corp.*, 74-1 ARB ¶ 8025 (Volz, 1974). Although other misconduct by the Grievant is shown by the evidence, insubordination is the principal

cause for the discharge in the instant case. The evidence of the Grievant's insubordinate attitude and behavior is abundant. At one point in his argument, legal counsel for the Company suggested that the Grievant virtually "discharged herself," and the facts tend to support that conclusion. For more than two and one-half years, the Grievant has engaged in a pattern of conduct that inevitably placed her on a collision course with her Employer. The above summary of facts only recites the highlights; the evidence reveals numerous instances where the Grievant showed a blatant disregard for her supervisors' authority. It should be obvious that such a course of conduct could not be tolerated indefinitely. In the case of *Bellingham Cold Storage and General Teamsters, Local 231*, 81 LA, 1243 (Krebs, 1983), the Grievant was discharged for refusing to obey the order of a supervisor, and for responding to each attempt to correct the problem by defiantly stating that he would not change his behavior. The arbitrator upheld the discharge, specifically noting the bad attitude of the Grievant:

> Any enterprise could not operate in a situation where employees manifest such blatant disrespect for their supervisors.... [T]he Grievant, as an employee, was obligated to obey the directives of his supervisor as long as such directives did not jeopardize his safety or require him to perform an illegal act. If it were otherwise, the organizational structure of the Employer would be meaningless. If the behavior exhibited by the Grievant were deemed acceptable and were followed by his co-employees, supervision would be ignored or treated with contempt and chaos would result. [Id. at 1247].

The most troubling aspect of the Grievant's misconduct in the instant case was the recurring state of hostility she evidenced towards supervision. The principal sources of that hostility appeared to be twofold; first, her fixed and unshakable conviction that she was being singled out to receive calls from "fake" customers merely to test her; and second, her standing objection to performing any services related to selling the Company's products and services.

Although the Grievant testified at great length in this case, she failed to explain to the Arbitrator's satisfaction the basis for her apparent obsession with the idea that the Company was making fake customer calls to test her. The evidence establishes that the various supervisors and management personnel who spoke to the

Grievant about this problem during the last two years of her employment went to great lengths to explain that her fears about alleged fake customer calls were unfounded. In February 1987, management explained to her that the Company relied upon service observations conducted by a supervisor who listens to the employee's conversation with the customer, and upon information developed from an outside research firm which performs customer opinion surveys. On many other occasions thereafter, similar efforts to explain the Company's methods of observation apparently failed to convince the Grievant that no fake customer calls were being made.

Moreover, management repeatedly requested specific information from the Grievant to substantiate her claims. The Grievant never came forward with the evidence she claimed to have about the alleged fake customer calls, but responded only by making thinly veiled threats that she would involve her lawyer or the American Civil Liberties Union, bring lawsuits, write to the Company President, or complain to the Public Service Commission. Although both Ms. Chadwick and Mr. Stewart expressed their exasperation over her repeated unsubstantiated accusations, there is no evidence to show that anyone in management retaliated against her for these threats.

It is a well established principle in labor relations that if an employee disagrees with a supervisor's lawful order, the employee should comply first and grieve later. See, e.g., *Taft Broadcasting Co.*, 69 LA 307 (Chaffin, 1977). The self-help device of refusal to comply is justified only in narrow circumstances, such as those cases when compliance would result in serious safety or health risks to the employee. No such conditions existed in this case.

In *Fourco Glass Company*, 84 LA 693 (Cantor, 1985), the arbitrator upheld the discharge of an employee who, after disagreeing with his foreman on the appropriate starting point for a 15-minute break period and being ordered to return to work, decided to take the break period anyhow, using his own calculation of the time. The arbitrator observed:

> The evidence is sufficient to show that this Grievant knowingly undertook to disobey the foreman because of a supposed claim of right. In any shop, and especially under these work rules, which define insubordination, that kind of conduct is enough to get any employee fired. *Id.* at 697.

The Grievant failed to meet her job requirements in other ways during the 1986-1989 period. The evidence showed failures to follow proper procedures in handling customers, and periods when her absences exceeded permissible levels.

The Grievant's counsel argued that the absenteeism problem had been cured by the time of her discharge, and that absenteeism therefore should not be taken into account among the grounds for discharge. The Grievant did have recurring problems with absenteeism. Repeated cycles of excessive absenteeism, absent other misconduct, can be just cause for discharge. For example, in *Howell Industries*, 95 LA, 1112 (Stoltenberg, 1990), the arbitrator upheld the discharge of a 22-year employee for excessive absenteeism, despite the grievant's perfect attendance during the probation period following reinstatement from a prior disciplinary discharge based on absenteeism. In the instant case, although absenteeism was not the principal cause for discharge, it was part of the pattern of poor performance that the Company properly took into account in making its overall assessment of the employee's future prospects with the Company. However, it should be noted that even if the prior history of excessive absenteeism is disregarded, the pattern of insubordination in this case is sufficient to justify discipline.

The Company's progressive discipline system is designed to ensure that employees are placed on notice of the Company's expectations, are evaluated and advised when performance fails to meet those expectations, and are administered appropriate discipline of increasingly greater severity in an effort to reform and rehabilitate the employee. In the instant case, it appears that the Company went "the extra mile" in an effort to save this employee. The Grievant received an On-the-Job Contact (OJC) on October 7, 1987 for her excessive absenteeism; another OJC on January 29, 1988 for her poor job performance and failure to follow supervisory directions; a Written Reminder on June 30, 1988 for her failure to follow Company rules, policies and supervisory instructions; and a Decision-Making Leave on October 5, 1988 for her failure to comply with Company rules, policies and supervisory instructions. Moreover, the record is replete with other instances of the Grievant's refusal to cooperate, punctuated by her insubordinate acts and other disrespectful behavior toward supervision.

The series of events which finally precipitated the Grievant's discharge began on June 29, 1989, when she refused to sign the

PREP form. She was well aware of the Company's policy on this matter, and the fact that such a refusal could result in discipline, for she had been counseled at length and disciplined about a similar incident in June 1988. Again, it was fully explained to the Grievant that the company only required her signature to evidence the fact that the PREP form had been reviewed with her and that her signature would not indicate her concurrence. This was a reasonable requirement. She was given several opportunities from June 29, 1989 through early July 1989 to relent and abide by the company's requirements. The Grievant clearly was insubordinate, and this offense was particularly serious in view of the Grievant's long history of uncooperative and insubordinate behavior.

The Grievant urges the Arbitrator to find that management unfairly singled her out for disparate treatment, and allowed her coworkers to go unpunished for similar offenses. However, there is no evidence in the record to substantiate these claims beyond the Grievant's unsubstantiated allegations.

Because insubordination and other misconduct has been established, and no acceptable defenses or mitigation has been shown, the only question remaining is whether the discipline of discharge was too severe. In a case in which the Arbitrator upheld a five-day disciplinary suspension against an employee who had been insubordinate by refusing to attend a meeting at the workplace, the Arbitrator stated the rule as follows:

> An arbitrator should not reverse a disciplinary penalty where the employer has acted arbitrarily and capriciously and in such a harsh or severe way as to disregard concepts of just cause or progressive discipline. *City of Highland Park*, 95 LA 1089, 1093 (Daniel, 1990).

Based on all the facts in evidence, the Arbitrator concludes that the Employer did not act in an arbitrary, capricious or unreasonable manner. The Employer had just cause to discharge the Grievant.

AWARD

The grievance is denied and dismissed.

Based upon the powers vested in me by the Laws of the State of Florida and the submissions and agreements of the parties, I hereby set my hand to this opinion and award on this 21st day of May, 1991.

/s/_____
W. Gary Vause
Arbitrator
St. Petersburg, Florida

APPENDIX D

**IN THE CIRCUIT COURT
OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

**NANCY MCNUTT,
Plaintiff,**

v.

**Case No. 91 4513 CA-01
Division C**

**GTE FLORIDA INC.,
Defendant.**

AFFIDAVIT OF RONALD B. JOHNSON IN OPPOSITION OF PLAINTIFFS COMPLAINT AND APPLICATION TO VACATE ARBITRATOR'S AWARD

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH SS

I, Ronald B. Johnson, depose and say:

That I am the State Manager of Labor Relations for GTE Florida area, which includes the operating area of GTE Florida Incorporated, and have held this position since February of 1989. Prior to this position, Affiant was the Director of Labor Relations for GTE Florida Incorporated from 1978 to February of 1985. Prior to being a Director of Labor Relations, Affiant was an Administrator of Labor Relations from 1975 to 1978, and also was a Supervisor of Labor Relations from 1972 to 1975.

Plaintiff was originally hired on September 18, 1967, as a temporary Traffic operator and resigned on September 20, 1969. She was again rehired as a temporary Traffic operator on December 1, 1969, and again resigned on September 1, 1973. On June 19, 1974, she was hired as a full-time Operator. On November 19, 1978, she was promoted to a Service Representative, and remained in that position until she was terminated on July 10, 1989. Plaintiff was terminated for violation of her Decision-Making Leave, attitude, over-all work record, and continued insubordinate behavior.

Affiant in these various positions had various responsibilities

with respect to labor arbitrations and the negotiation of the Collective Bargaining Agreement with the International Brotherhood of Electrical Workers, Local 824, which is the sole certified bargaining agent for bargaining unit employees of GTE Florida Incorporated ("GTEF") of which the Plaintiff in this case was one of said bargaining unit employees. As Administrator and later Director of Labor Relations, as well as in Affiant's capacity as State Manager of Labor Relations, Affiant has full responsibility for the conduct of the Grievant's arbitration, the Collective Bargaining Agreement and the collective bargaining negotiations between GTEF and Local 824 of the International Brotherhood of Electrical Workers.

Under Article XVI of the Collective Bargaining Agreement (a partial copy of which is attached hereto and marked Affiant's Exhibit A and incorporated by reference herewith), GTEF and Local 824 IBEW have a three-step grievance procedure, which was followed in this case. Subsequent to the conclusion of the grievance procedure, Local 824 IBEW filed a Demand for Arbitration. Arbitrators were chosen from a panel of five arbitrators given by the American Arbitration Association, and Arbitrator Vause was chosen in the manner prescribed under Paragraph 3.1, Section 3 of Article XVII of the Collective Bargaining Agreement. Said arbitration was conducted under the voluntary rules for labor arbitration of the American Arbitration Association. Under the custom and practice between Local 824 IBEW and GTEF, the proceedings were transcribed by a court reporter, and the parties filed written post-hearing briefs. The Arbitrator rendered his decision with a written opinion, a copy of which is attached hereto and marked Affiant's Exhibit B and incorporated by reference herewith.

To the best of Affiant's knowledge and belief, Local 824 IBEW was aware of the fact that Leslie R. Stein, an attorney for GTEF, taught courses at the Stetson University College of Law where W. Gary Vause was a professor. The said W. Gary Vause has arbitrated previous grievances between GTEF and Local 824 IBEW namely, Leroy Allen, which was arbitrated in 1980 and which resulted in a decision in favor of the Company; a grievance filed by Ralph Kehn in 1981, which resulted in a decision in favor of the Union and a grievance filed by Stephen Berry in 1986 involving a contractual issue, which resulted in a ruling in favor of the Company. The Leroy Allen and Ralph Kehn grievances were filed because these employees were discharged from the Company.

Further Affiant sayeth not.

/s/ Ronald B. Johnson
Ronald B. Johnson

Subscribed and sworn to before me /s/ Patricia K. Cowart a notary public in and for said county and state on this 6th day of September, 1991.

/s/ Patricia K. Cowart
Notary Public
State of Florida
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. APR. 29,1995
BONDED THRU GENERAL INS. UND.

(MCNUTTJN.SN]

APPENDIX E

GTE Florida Legal Department
(Letterhead)

April 16, 1992

Ms. Nancy McNutt
3030 Courtland Street
Sarasota, FL 34237

Re: YOUR LETTER TO MARGARET B. HAIGHT DATED MARCH 23, 1992 AND YOUR LETTER TO ME DATED APRIL 15, 1992

Dear Ms. McNutt:

This letter is in response to your information request which you sent to Margaret B. Haight, Area Vice President-Human Resources regarding information on your vested pension and your Employee Stock Ownership Plan ("ESOP") benefits.

The tenor of your letter dated March 23, 1992, appears to claim that you were denied your earned accrued vested pension benefits. This is simply not correct. The Company's records reflect that you were employed September 18, 1967 to September 20, 1969 as a part-time employee. You were then reemployed part-time from December 1, 1969 to September 1, 1973, and your accredited service was then March 14, 1973 due to changes in the part-time rules. You were again reemployed part-time from December 3, 1973 to January 6, 1974. No service credits were given for this short period as Company policy requires six months of service in order for bridging of service to occur. You were then again reemployed June 19, 1974 and remained an employee until the date of July 10, 1989. As a result of this period of service, your service was bridged, and your accredited service date is January 14, 1969, which is the date used to calculate your vested pension.

Upon the termination of your employment effective July 10, 1989, you were sent a vested pension certificate on October 29, 1990. This certificate provides that you will have a vested pension payable to you either at age 65 or at such time as you meet the rule of 76. This will occur October 1, 2014 for normal retirement or April 1, 2005 for early retirement.

A copy of that certificate is attached herewith for your information. A monthly pension amount that will be payable to you at age 65 is noted on the attached copy of the vested pension certificate. Please note that the GTE Pension Plan for Hourly Employees has no lump sum option provision, and a copy of the summary plan description is also attached with this letter.

The administrator of the GTE Pension Plan for Hourly Employees is the GTE Service Corporation Employee Benefits Committee as set forth on page 34 of the attached summary plan description.

You had requested in your letter of March 23, 1992, a copy of the latest Annual Report (the 5500 report) which is filed with the United States Department of Labor. This particular report includes a schedule of investments, loans or other obligations and transactions in excess of five percent of plan assets. The report contains 458 pages, and the charge to cover copying costs for the plan participants is $113.50. If you wish a copy of this report, as GTE Florida Incorporated is not obligated to provide it to you without charge, please forward to me a check payable to GTE Florida Incorporated in the amount of $113.50, and a copy will be forwarded to you.

I have also attached copies of your ESOP distribution forms, along with copies of the statements from GTE Shareholders Services regarding their value at the time of distribution.

I believe the forgoing information more than adequately responds to your request to Ms. Haight on March 23, 1992.

Sincerely,
/s/ Lorin H. Albeck
Lorin H. Albeck

LHA:tlg
Attachments

bc: Art Nash
Malcom King

(GTE logo)
Certificate of Deferred Vested Pension

CERTIFICATE HOLDER
Name: Nancy C. McNutt
SSN: 267-04-6036
Address:
3030 Courtland St.
Sarasota, FL 34237
Termination
Date of Issue: Oct. 02, 1990

PLAN PARTICIPANT
Name: Nancy C. McNutt
SSN: 267-04-6036
Date of Termination: Jul 10, 1989
Normal Commencement Date: Oct. 01, 2014
Early Commencement Date: Apr 01, 2005
Pension Amount: $473.59
Spousal Coverage: Yes

Co No: 004 - GTE Florida
Plan: General Telephone Company of Florida Plan for Hourly-Paid Employees' Pensions.

This certifies that you are entitled to a GTE Pension Benefit based on the provisions of the above named plan as they were in effect on the date the plan participant terminated from employment.

Payment of this benefit may commence on the plan particpant's Normal Pension Commencement Date which is the first day of the month after his/her attainment of age 65. This benefit amount will be actuarially reduced if payments begin on or after the plan participants Early Pension Commencement Date but before the Normal Pension Commencement Date.

The pension amount sated above has been determined in accordance with the election made by the plan participant on the Pre-Retirement Spouse's Benefit Election Form as in effect on the date of issuance of this certificate. A subsequent election or change in the plan participant's marital status may affect the amount of the pension annually received. If this certificate has been issued under a Qualified Domestic Relations Order, the pension amount stated above has been determined in accordance with the provisions of the order.

If you wish to make a new election or if your marital status changes, you must notify GTE at the below address. In addition all certificate holders must advist GTE of any changes of address so that the plan may contact you as necessary.

Application for your benefit must be filed four months before payments can commence. To receive an application, please complete the bottom portion of this form.

GTE SHAREHOLDER SERVICES INCORPORATED
PENSION DEPARTMENT
P.O. BOX 208
NORTH QUINCY, MA 02171-0208

(GTE logo)

GTE Consolidated Employee Stock Ownership Plan (ESOP)

Request for Distribution Or Matured Balance Withdrawal

BASIC DATA Please print or type required information and return to your Human Resources Department. To assure prompt receipt of your distribution, provide a **current** mailing address.

Employee's Name	Employer's Name (Company)
Nancy C. McNutt	GTE FL
Street	Street
3030 Courtland St.	1701 Ringling Blvd.
City, State Zip Code	City, State, Zip Code
Sarasota, FL 34237	Sarasota, FL 34236

Social Security No.	Employee No.	Plant or Location No.
267-04-6036	7533	

DISTRIBUTION REASON: (CHECK ONE BOX)

I. SEPARATION FROM SERVICE DISTRIBUTION - Last day of GTE Compensation

A ❑ TERMINATION

B ❑ DISABILITY— Attach documentation of total and permanent disability

Committee Aproval: By_____ Date_____ By_____ Date_____

C ❑ RETIREMENT (Check One Box)

TIMING: ❑ Pay my distribution now

❑ Delay my distribution until the calendar year following my retirement date.

D ❑ DEATH (Check One Box and PRINT the pertinent information required)

❑ ESOP Beneficiary Designation Form is attached.

❑ There is no ESOP Beneficiary Designation Form on file. Surviving spouse to have distribution issued in his/her name.

❑ There is no ESOP Beneficiary Designation Form on file and no surviving spouse. Distribution to be issued to ESTATE and mailed to the following individual:

Pertinent Information:

Name _____ Birth Date _____ Soc. Sec. No. _____

Address _____ City, State, Zip _____

II. REQUEST FOR MATURED BALANCE WITHDRAWAL -
For in-service employees ONLY

☒ Total Matured Balance available
☐ Part of Matured Balance Enter number of shares requested _____

SIGNATURES:
When completed and signed, returned the first and second copies (white and yellow) of this form to your Human Resources Department. Keep the pink copy and Change of Address Form for your records. If you move in the future, return the Change of Address Form to GTE Shareholder Services Incorporated.

/s/ Nancy C. McNutt — 12-17-87
EMPLOYEE/BENEFICIARY — DATE

/s/ Dorothy J. Grooms — 12-22-87
HUMAN RESOURCES — DATE

G902 2/86

GTE SHAREHOLDER SERVICES
ESOP DISTRIBUTION REGISTER FOR MARCH 01, 1989
LOCATION - 90400

MARKET VALUE
44.625

TAX COST BASIS
26.842

267-04-6036
Nancy C. McNutt
3030 Courtland St.
Sarasota, FL 34237

CHECK NO
00592242

	Non Contributory GTE Shares	GTE Contributoty Shares By Employee	By GTE	Total GTE Shares
Before Distribution	76.161	26.621	12.242	115.024
Distribution	7.483	11.630	8.568	27.681
After Distribution	68.678	14.991	3.674	87.343

Distribution Reason
Matured Bal Pay

Whole Share Value	Fractional Share Value	Contributions	Unrealized Appeciation
1204.88	30.39	0.00	78.96

Tax Withheld	Check Amount	Net Taxable
0.00	30.39	1156.30

(GTE logo)

I. OUT OF SERVICE DISTRIBUTION
II. MATURED BALANCE WITHDRAWAL
III. DIVIDEND PAYMENT CHANGE

GTE Consolidated Employee Stock Ownership Plan (ESOP)

BASIC DATA Please print or type required information and return to your Human Resources Department. To assure prompt receipt of your distribution, provide a **current** mailing address.
Please check the appropriate box below.

Employee's Name
Nancy C. McNutt

Street
3030 Courtland St.

City, State Zip Code
Sarasota, FL 34237

Social Security No. 267-04-6036

Employee No. 7533

I. SEPARATION FROM SERVICE DISTRIBUTION - Last day of GTE Compensation

A ❑ TERMINATION

B ❑ DISABILITY— Attach documentation of total and permanent disability

Committee Aproval: By_____ Date_____ By_____ Date_____

C ❑ RETIREMENT (Check One Box)

TIMING: ❑ Pay my distribution now
❑ Delay my distribution until the calendar year following my retirement date.

D ❑ DEATH (Check One Box and PRINT the pertinent information required)

❑ ESOP Beneficiary Designation Form is attached.

❑ There is no ESOP Beneficiary Designation Form on file. Surviving spouse to have distribution issued in his/her name.

❑ There is no ESOP Beneficiary Designation Form on file and no surviving spouse. Distribution to be issued to ESTATE and mailed to the following individual:

Pertinent Information:
Name _____ Birth Date _____ Soc. Sec. No. _____

Address _____ City, State, Zip _____

II. MATURED BALANCE WITHDRAWAL -

For in-service employees ONLY

- ☒ Total Matured Balance available
- ☐ Part of Matured Balance Enter number of whole shares requested _____

III. DIVIDEND PAYMENT CHANGE

- ☐ Have my future ESOP dividends paid in CASH
- ☐ Have my future ESOP dividends reinvested in shares of GTE stock.

(This change must be received at GTE Shareholder Services by the tenth of the month immediately preceding the payable date of the dividend.)

SIGNATURES:

When completed and signed, returned the white and yellow copies of this form to your Human Resources Department. Keep the pink copy for your records.

/s/ Nancy C. McNutt — 1-26-89

EMPLOYEE/BENEFICIARY — DATE

/s/ Dorothy J. Grooms — 1-31-89

HUMAN RESOURCES — DATE

G902 (REV. 11/87)

MARKET VALUE
59.750

TAX COST BASIS
27.314

267-04-6036
Nancy C. McNutt
3030 Courtland St.
Sarasota, FL 34237

CHECK NO
00605567

	Non Contributory GTE Shares	GTE Contriburoty Shares By Employee	By GTE	Total GTE Shares
Before Distribution	68.678	14.991	3.674	87.343
Distribution	68.678	14.991	3.674	87.343
After Distribution	0.000	0.000	0.000	0.000

Distribution Reason
Matured Bal Pay

Whole Share Value 5198.25	Fractional Share Value 20.49	Contributions 0.00	Unrealized Appeciation 2821.93
Tax Withheld 0.00	Check Amount 20.49	Net Taxable 2396.81	

I. OUT OF SERVICE DISTRIBUTION
(GTE logo) **II. MATURED BALANCE WITHDRAWAL**
III. DIVIDEND PAYMENT CHANGE

GTE Consolidated Employee
Stock Ownership Plan (ESOP)

BASIC DATA Please print or type required information and return to your Human Resources Department. To assure prompt receipt of your distribution, provide a **current** mailing address.
Please check the appropriate box below.

Employee's Name
Nancy C. McNutt

Street
3030 Courtland St.

City, State Zip Code
Sarasota, FL 34237

Social Security No. Employee No.
267-04-6036

I. SEPARATION FROM SERVICE DISTRIBUTION - Last day of GTE Compensation

A ☒ TERMINATION

B ❑ DISABILITY— Attach documentation of total and permanent disability

Committee Aproval: By_____ Date_____ By_____ Date_____

C ❑ RETIREMENT (Check One Box)

TIMING: ❑ Pay my distribution now
❑ Delay my distribution until the calendar year following my retirement date.

D ❑ DEATH (Check One Box and PRINT the pertinent information required)

❑ ESOP Beneficiary Designation Form is attached.

❑ There is no ESOP Beneficiary Designation Form on file. Surviving spouse to have distribution issued in his/her name.

❑ There is no ESOP Beneficiary Designation Form on file and no surviving spouse. Distribution to be issued to ESTATE and mailed to the following individual:

Pertinent Information:

Name Nancy C. McNutt Birth Date 9-1-49 Soc. Sec. No. 267-04-6036

Address 3030 Courtland Dr. City, State, Zip Sarasota, FL 34237

II. MATURED BALANCE WITHDRAWAL -

For in-service employees ONLY

- ❑ Total Matured Balance available
- ❑ Part of Matured Balance Enter number of whole shares requested _____

III. DIVIDEND PAYMENT CHANGE

- ❑ Have my future ESOP dividends paid in CASH
- ❑ Have my future ESOP dividends reinvested in shares of GTE stock.

(This change must be received at GTE Shareholder Services by the tenth of the month immediately preceding the payable date of the dividend.)

SIGNATURES:

When completed and signed, returned the white and yellow copies of this form to your Human Resources Department. Keep the pink copy for your records.

/s/ Nancy C. McNutt — 8-8-89

EMPLOYEE/BENEFICIARY — DATE

/s/ Dorothy J. Grooms — 8-11-89

HUMAN RESOURCES — DATE

G902 (REV. 11/87)

April 15, 1992

Lorin Albeck
GTE Florida
P.O. Box 110, MC7
Tampa, FL 33601

Dear Mr. Albeck:

Please see attached letter, dated March 23, 1992, to Meg Haight, Vice President, Human Resources/Plan Administrator.

Please be advised that the information requested in this letter is to be made available, per federal guidelines, within 30 days of request.

The pamplet "General Telephone Co. of Florida Plan For Hourly-Paid Employees Pensions" and the "Certificate of Deferred Vested Pension" (that does not show my service date) are not what was requested.

As per my letter to Meg Haight, please provide an explanation, and items 1 through 5 by April 25, 1992.

Thank You.

Sincerely,

/s/ Nancy C. McNutt
3030 Courtland St., Sarasota 34237
953-3372

3/27/92
XC: Albeck

March 23, 1992

Meg Haight
Vice President-Human Resources/Plan Administrator
GTE Florida
P.O. Box 110
Tampa, FL 33601

Re: Accrued vested pension benefits - Nancy Curtiss McNutt, former employee number 7533, date fired by Meredith Repassy and Dave Stewart - July 10, 1989

Please provide the following by April 25, 1992 so that I can compare GTE Florida records with my own.

1. Please provide "named fiduciaries" with authority to control and manage the operation and administration of the plan
2. Statement of total benefits accrued/vested, my individual benefit statement, and lump sum option
3. Copy of the latest updated Summary Plan Description
4. The latest annual report form 5500, 5500-C, or 5500-R
5. The documents under which the plan is established or operated (from 1967 through 1989), such as plan rules or the trust agreement and collective bargaining agreement

Please explain why earned accrued vested pension benefits were denied to me, based on sworn statements in court and during the arbitration, from January 14, 1969 to June 19, 1974.

Sincerely,

/s/ Nancy McNutt
Nancy McNutt
3030 Courtland Street
Sarasota, FL 34237
813 953-3372

Also provide all my ESOP records (ESOP's are classified as pension plans under ERISA). I will pay all the necessary charges for the requested information.

APPENDIX F

GTE Florida Legal Department
(Letterhead)

April 9, 1992

The Honorable Andrew D. Owens, Jr.
Judge of the Circuit Court
P.O. Box 48927
Sarasota, FL 34230

Re: NANCY MCNUTT VS. GTE FLORIDA INCORPORATED
CASE NO. 91-4513-CA-01

Dear Judge Owens:

On April 8, 1992, I received a copy of a Notice of Appeal with respect to the Final Order confirming the arbitrator's award. On March 12, 1992 or thereabouts, Plaintiff had filed two motions pursuant to Rule 1.540(b) of the Florida Rules of Civil Procedure for relief from the Final Judgement, and these motions were noticed for hearing for April 27, 1992, at the hour of 2:30 p.m.

On April 6, 1992, Plaintiff filed a Notice of Appeal to the Final Order confirming the arbitrator's award and, inasmuch as this notice was filed prior to the disposition of the motion, the motion is deemed abandoned. [See *Seiferth vs. Seiferth*, 121 So2d 689, 690 (Fla. DCA 3rd 1960).] Moreover, by filing the Notice of Appeal, the Circuit Court no longer has jurisdiction to proceed on the motions for relief of judgment until after the disposition of the appellate proceedings. [See *United Services Automobile Association vs. Smolensky*, 391 So2d 355 (Fla. DCA 2nd 1980); *Hudson vs. Hofmann*, 471 So2d 117, 118 (Fla. DCA 2nd 1985); Rule 9.600(b), Florida Rules of Appellate Procedure.]

Based on the foregoing, it would therefore appear appropriate to take the motions for relief from the judgment off calendar until after the disposition of the appellate proceedings.

Respectfully,

/s/ Lorin H. Albeck
Lorin H. Albeck

LHA:tlg

C: Nancy Mcnutt
3030 Courtland Street
Sarasota, FL 24327

APPENDIX G

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

NANCY MCNUTT,
Appellant,

v. **Case No. 92-01328**

GTE FLORIDA, INC.
Appellee.

NOTICE OF VOLUNTARY DISMISSAL

The appellant, NANCY MCNUTT, voluntarily dismisses this appeal pursuant to Fla.R.App.P. 9.350(b)

/s/ Nancy McNutt
Nancy McNutt
3030 Courtland Street
Sarasota, Fl 34237
813 953-3372
pro se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing notice of voluntary dismissal has been furnished to Lorin Albeck, GTE Florida, P.O. Box 110, MC 7, Tampa, Fl 33601 by United States Mail, this 15th day of June, 1992.

/s/ Nancy McNutt
Nancy McNutt

**IN THE DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA
JUNE 15, 1992**

NANCY MCNUTT,
Appellant(s),

v.

Case No. 92-01328

GTE FLORIDA, INC.
Appellee(s).

BY ORDER OF THE COURT

Appellant, pro se, having filed a notice of voluntary dismissal, upon consideration, it is

ORDERED that this appeal is hereby dismissed.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

/s/ William A. Haddad
WILLIAM A. HADDAD, CLERK by cs

c: Ms. Nancy McNutt
Lorin H. Albeck, Esq.
Karen E. Rushing, Clerk

/SC

APPENDIX H

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT

NANCY MCNUTT,
Appellant,

v. **Case No. 92-02009**

GTE FLORIDA, INC.
Appellee.

Opinion filed October 21, 1992

Appeal from nonfinal order of the Circuit Court for Sarasota County; Andrew D. Owens, Jr., Judge

Nancy McNutt, pro se.

James V. Carideo, Thomas R. Parker, Leslie R. Stein, Lorin H. Albeck, Franklin H. Deak, Joseph W. Foster, Kimberly Caswell, Ernesto Mayor, Jr., and Eric Edginton, Tampa, for Appellee.

PER CURIAM.

Affirmed.

CAMPBELL, A.C.J., HALL and PATTERSON, JJ., Concur.